

CAUSE NO. 18-08-0777-CVA

SAN MIGUEL ELECTRIC COOPERATIVE, INC.,	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiff,	§	
	§	
v.	§	81st/218th JUDICIAL DISTRICT
	§	
ALONSO M. PEELER, JR.,	§	
BARBARA GENE PEELER, AND	§	
AM PEELER RANCH, LLC,	§	
	§	
Defendants.	§	ATASCOSA COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION,
APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND
REQUEST FOR TEMPORARY INJUNCTION AND
PERMANENT INJUNCTIVE RELIEF**

Plaintiff, San Miguel Electric Cooperative, Inc. ("San Miguel"), files this Original Petition, Application for Temporary Restraining Order, and Request for Temporary Injunction and Permanent Injunctive Relief, complaining of Defendants, Alonso M. Peeler, Jr. and Barbara Gene Peeler (collectively, "Defendants").

DISCOVERY CONTROL PLAN

1. Pursuant to TEX. R. CIV. P. 190.4, San Miguel intends to conduct discovery in this case under Level 3.

PARTIES

2. Plaintiff, San Miguel Electric Cooperative, Inc., is a not-for-profit electric cooperative corporation doing business in the State of Texas.

3. Defendants, Alonso M. Peeler, Jr and Barbara Gene Peeler are individuals who reside at 100 La Parita Road, Jourdanton, Atascosa County, Texas 78026. Defendants may be served where they reside or wherever each of them may be found. Defendant, AM Peeler Ranch,

LLC, is a Texas limited liability company that may be served by serving its registered agent, Alonzo M. Peeler, Jr., at 100 La Parita Road, Jourdanton, Texas 78026.

JURISDICTION AND VENUE

4. This Court has proper jurisdiction over the parties to and the subject matter of this action. The amount in controversy and damages sought are within the jurisdictional limits of this Court.

5. Venue of this action properly lies in Atascosa County, Texas pursuant to: (1) TEX. CIV. PRAC. & REM. CODE § 65.023, as both Defendants are residents of the state of Texas and domiciled in Atascosa County, Texas; and (2) TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1), as all or a substantial part of the events and/or omissions giving rise to the claims herein occurred in Atascosa County, Texas.

6. Pursuant to Texas Rule of Civil Procedure 47, San Miguel seeks monetary relief over \$1,000,000.00, as well as non-monetary relief.

BACKGROUND FACTS

7. San Miguel owns and operates a 410 megawatt mouth-of-mine, lignite-fired generating plant and associated mining facilities that furnish power and energy to the South Texas Electric Cooperative, which in turn distributes power throughout South Texas. As set forth in more detail in the Affidavit of Michael Kezar attached hereto as Exhibit “1,” San Miguel is successor to the original lessee of a Coal, Lignite and Mineral Lease dated August 15, 1953 from Defendants’ predecessors (The “Peeler Lease”). The Peeler Lease has been amended seven times between 1953 and the present and currently covers approximately 6,300 acres in Atascosa County. In addition to the Peeler Lease and amendments, San Miguel and Defendants are parties to various other deeds, easements and agreements governing access to and use of the Peeler

Lease premises, as detailed in the attached Affidavit of Michael Kezar. Pursuant to the Peeler Lease and these various other agreements, San Miguel has mined lignite from the Peeler Lease premises and has further used the premises as authorized by the Peeler Lease for reclamation and required monitoring activities and also as specifically authorized in the various other agreements to support mining operations on other lands and to support operations of the generating plant. San Miguel has expended and continues to expend many tens of millions of dollars mining and in reclamation of the Peeler Lease and erecting and maintaining various roads, water wells, retention ponds, transmission lines and other facilities as authorized by the Peeler lease and associated agreements. While mining for lignite on the Peeler Lease premises has ceased, San Miguel is currently engaged in ongoing mining on other nearby properties as well as ongoing reclamation of the Peeler Lease premises. San Miguel has complied with the Peeler Lease and other agreements in all material respects.

8. San Miguel is forced to file this lawsuit because Defendants' have interfered with and threatened continued interference with and violation of San Miguel's rights pursuant to the Peeler Lease and the various other agreements, deeds and easements. Defendants have attempted to unilaterally and summarily terminate the Peeler Lease, and/or have tortuously interfered with the Peeler Lease, without authorization and without compliance with the dispute resolution process dictated by the parties' agreement. On Friday August 10, 2018 Defendants asserted that the San Miguel's lease has terminated and that the Atascosa County Sheriff and other regulatory authorities have been notified of San Miguel's "eviction" from the lease. Defendants also improperly alleged that the express permission of AM Peeler Ranch, LLC is required before San Miguel can enter any leasehold acreage. A true and correct copy of the Peeler's letter is attached hereto as Exhibit "2."

9. Apparently on the mistaken belief that by rejecting any further annual rental payments under the Peeler Lease, Defendants can terminate the lease, Defendants letter asserted that after midnight August 14, 2018, San Miguel will no longer have any right of entry to the leasehold premises for any reason, except the continuing right of ingress and egress to access adjacent lands that are being mined or which may be mined in the future. In clear violation of the express terms of the Peeler Lease and the various other easements, deeds and agreements, Defendants have also threatened San Miguel with criminal consequences should San Miguel attempt to access the Peeler Lease premises after August 14, 2018. In blatant disregard of a specific Water Well Deed and Easement Agreement between Defendants and San Miguel by which San Miguel drilled and currently operates various water wells critical to the generation plant, Defendants also claim to have notified the Evergreen Underground Water Conservation District that San Miguel “no longer has control of the leasehold acreage.” Defendants also threaten that San Miguel will have no access after August 14, 2018 to certain essential water control facilities expressly provided for by a Peeler Lease amendment.

10. Defendants’ interference is wrongful, unlawful and unjustified and has caused, and continues to cause San Miguel damages. San Miguel has constructed and installed many millions of dollars of infrastructure on the Peeler Lease that Defendants’ unilateral ouster, if effective, would require San Miguel to remove within 90 days or forfeit to Defendants. It would be impossible for San Miguel to remove the facilities and infrastructure within 90 days. Most importantly, Defendants’ threatened interference will also cause irreparable injury to San Miguel by forcing premature cessation of mining operations and closure of the electric power generating plant. The threatened closure of San Miguel’s generating plant is likely to cause shortages on the state power grid which could lead to rolling blackouts across the state. Lack of access to San

Miguel's water wells and retention ponds would also threaten the health of San Miguel's employees inasmuch as San Miguel would be unable to control the significant dust caused by San Miguel's 24-hour operations. As a matter of law and pursuant to the parties' express agreement, San Miguel is entitled to declaratory relief and injunctive relief regarding San Miguel's right to access and use the Peeler Lease to conduct all permissible operations, including ongoing reclamation and monitoring activities and any other usage authorized by the Peeler Lease and associated agreements.

A. The Peeler Lease and Amendments

11. The original 1953 Peeler Lease, granted San Miguel's predecessor exclusive rights for "entering upon, testing, investigating, exploring . . . producing, transporting coal, lignite, . . . with rights of ingress and egress to, on, over and across the lands covered hereby or unitized herewith or adjoining thereto or that might be located in the general area thereof, for all such purposes, including, but not by way of limitation, the building of roads, railroads . . . pipe lines, rights of way and necessary easements therefor, building power stations, electric or power transmission lines, pipe lines, telephone lines and other structures"¹ Section II of the Peeler Lease expressly provides that the lease remains in force so long as lessee pays annual rentals as provided in the lease and/or produces coal, lignite or other minerals from the lease premises. Section VIII of the Peeler Lease further states that "the title to the minerals and the lands hereby leased shall not revert to lessor or his assigns so long as annual rentals are paid or the lands are being mined." Although the 1953 Peeler Lease did not impose any obligation on lessee to restore and reclaim the surface, as explained below, subsequent amendments imposed a reclamation obligation thus requiring continuation of the Peeler Lease beyond cessation of actual mining activities. Accordingly, San Miguel and its predecessors paid annual rentals until actual

¹Exhibit "A" to Kezar Affidavit.

mining began and then when extraction of lignite ceased on the Peeler Lease premises, San Miguel resumed making annual rental payments as reclamation and required monitoring activities remained ongoing.

12. Section XI of the Peeler lease states that “[t]his lease shall never be forfeited, cancelled or terminated for failure by lessee to perform in whole or in part any of its implied obligations . . . *unless there shall first be a final judicial ascertainment that such obligation or cause exists and that lessee is in default.*”² Ignoring this provision of their lease, Defendants unilaterally claim that San Miguel has not finished reclamation of the premises in a reasonable time and appear to use this assertion as justification for declaring the lease terminated. As set forth in more detail below, San Miguel has regulatory obligations with regard to reclamation of the mine. Defendants’ unilateral and unjustified attempted ouster could prevent San Miguel from fulfilling its regulatory responsibilities with regard to closing the mine and ongoing water monitoring obligations, which could subject San Miguel to fines and other penalties and regulatory enforcement actions, as explained in more detail in the attached Affidavit of Michael Kezar.

13. In 1979, Defendants and San Miguel amended the Peeler Lease (the Second Lease Amendment”) to include provisions for reclamation of the mined areas, revegetation and to provide rentals for any surface lands used by San Miguel for facilities and activities other than active mining. Section V of the Second Lease Amendment provides “Lessee is hereby granted the right, without any further consideration or payment, to use the premises and any mine shafts, pits, haulage ways, and other improvements and facilities on, in or under the premises for or in connection with mining, removing, and transporting, of coal, lignite, clay and other minerals

² Exhibit “A” to Kezar Affidavit (emphasis added).

from other lands, and for the purpose of access to other land.”³ Pursuant to this provision and the various other deeds, easements and agreements described below, San Miguel has the continuing right to use the Peeler Lease premises and facilities thereon in connection with mining and transporting lignite from other lands. San Miguel’s rights are not limited to bare ingress and egress as Defendants suggest in their August 10, 2018 letter.

14. Section V of the Second Lease Amendment also provides that San Miguel must remove all facilities on the Peeler Lease within 90 days after termination of the lease or they will become the property of Defendants. This provision underscores the need for a judicial determination of any alleged breach and the inappropriateness of Defendants’ unilateral ouster.

15. Section VI of the Second Lease Amendment replaced the original surface damage provisions in the 1953 lease with an obligation to restore and reclaim the surface of any excavated area: “Lessees agree, within six months after the abandonment of any excavated area located on the leased premises that it will commence operations to level and restore the surface thereof to that extent which is feasible and reasonably practicable, and will diligently prosecute such operations to completion without undue delay....” As damages for the loss of use of excavated areas, Section VI requires San Miguel to pay \$250 per acre, and if the loss of use should continue more than four years, and additional \$50 per acre each year until the reclamation is complete. In the event of a disagreement as to whether the lands have been restored to their original condition, the Second Lease Amendment provides for arbitration process to resolve such disputes. To the extent Defendants are complaining that San Miguel’s reclamation and restoration has been deficient, that dispute must be submitted to arbitration and cannot be unilaterally dictated by Defendants.

³Exhibit “C” to Kezar Affidavit

16. Although the Peeler Lease has not terminated, the Second Lease Amendment provides that even after termination San Miguel “shall have the continued use of the leased premises which are necessary for roadways, railroad rights of way or other easements and right of ingress, egress and regress elsewhere granted herein that may reasonably be required for the mining operations and the removal of coal, lignite, clay and minerals associated therewith from other lands that may be contiguous to or in the general area of the premises covered hereby” As explained further below, Defendants granted San Miguel other deeds and easements for transmission lines, water wells, a dragline erection location and other facilities required for the mining operations on other lands in the general area of the Peeler Lease.

17. In 1981 the Peeler Lease was amended a sixth time (the “Sixth Lease Amendment”) specifically in recognition that water control facilities were needed on the lease to comply with certain state and federal rules and regulations and that these regulations could delay reclamation and return of the surface to Defendants. Consequently, the Sixth Lease Amendment provided that “Water Control Facilities such as diversion ditches, dikes, and retention or sedimentation ponds will be required in order to meet State and Federal Regulations.... Water Control Facilities will be required for periods which will exceed the four (4) year restoration period referred to in Article VI of Amendment No. 2. ***Lessor hereby waives the four (4) year restoration period on these facilities, and allows the use of these facilities by Lessee with no additional compensation until mining and reclamation activities are complete*** on Lessor’s property or until the facility is no longer required by Lessee, whichever occurs first”⁴ Notwithstanding this express waiver, Defendants’ August 10, 2018 letter unilaterally declared that because reclamation has not been completed in a reasonable time, Defendants were refusing continued access to these water control facilities necessary for San Miguel to comply with state

⁴ Exhibit “_G” to Kezar Affidavit (emphasis added).

and federal regulations and, if successful, could cause San Miguel to violate environmental laws and regulations and subject San Miguel to fines and other penalties.

B. Other Deeds, Easements and Agreements

18. Water Well Deed and Easement. On November 9, 1979, Defendants executed a Warranty Deed and Easement for Water Well Sites by which Defendants conveyed 5 one-acre tracts for San Miguel to drill water wells for supplying water to the generating plant. Defendants specifically warranted that they would not interfere with San Miguel's right to take and use all of the underground or percolating water that could be produced. Defendants also granted easements for San Miguel to install and maintain any pipelines "necessary to transport water from any of the well sites provided hereunder to Grantee's lignite-fired steam electric generating plant." In blatant disregard of these deeds and easements, Defendants now purport to exclude San Miguel from its own water wells and have falsely informed the Evergreen Underground Water Conservation District that San Miguel no longer had access to its water wells.

19. Dragline Erection Site, Haul Roads and Retention Pond Easements. On October 29, 1976, Defendants granted San Miguel easements for a site for San Miguel to erect its immense dragline and easements for haul roads across the Peeler Lease. The easement was subsequently amended to include additional easements for various retention ponds San Miguel uses in its operations. All of these easements remain necessary for San Miguel to execute its mining operations and support the generating plant and the duration of these easements lasts until such time as they are no longer necessary for the operation and maintenance of the lignite mine and/or the electric generating plant. Although the easements remain critical to the operation of the mine and the generating plant, Defendants are attempting to wrongfully exclude San Miguel from accessing these easements.

20. Flood Easement. On December 16, 1993, Defendants granted San Miguel an easement to flood certain areas of the Peeler Lease from time to time along with easements to conduct certain environmental studies and maintain the flood easement. The easement also specifically provides that “In the event of any unreasonable interference or threatened unreasonable interference with the Easements or easement rights herein granted or with the other rights and obligations of the parties hereunder, the Easements and such rights and obligations may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting such interference and commanding compliance with the provisions hereof, which restraining orders and injunctions shall be obtainable upon proof of the existence of such interference or threatened interference, and without the necessity of proof of inadequacy of legal remedies or irreparable harm”⁵

21. Transmission Line Easement. On November 9, 1979, Defendants granted SMEC an easement for construction and maintenance of one or more electric power lines and communication lines over the Peeler Lease premises for use of San Miguel. By its terms, the easement does not terminate until San Miguel abandons all lines constructed thereunder. These lines are currently in continuous use, have never been abandoned and there is no plan to abandon them in the foreseeable future. Defendants’ threatened action would prevent San Miguel from enjoying the benefit and use of this express easement.

22. Buffer Zone Lease Agreement. On September 23, 1975, Defendants granted San Miguel a lease on lands surrounding the 330 acres Defendants sold to San Miguel for construction of the electric power generation plant. The lease was designed for use by San Miguel in connection with and incidental to the location of the plant and to provide a buffer zone around the plant for noise light and emissions emanating from the plant. The term of the lease is

⁵Exhibit “O” to Kezar Affidavit

50 years from the date of the lease (2025) or when San Miguel abandons the plant, whichever is longer. Defendants have threatened to interfere with San Miguel's rights under this lease.

C. Defendants' Violations and Threatened Violations Must Be Enjoined

23. On August 10, 2018 at 5:01 PM, San Miguel received an email copy of a letter from Mary Whittle, attorney for Alonzo and Barbara Gene Peeler, announcing her client's belief that, on August 14, 2018, any leasehold, tenancy, or license that San Miguel holds for properties owned by the Peelers will expire. Ms. Whittle announced several actions that (a) had already been taken and (b) would be taken by the Peelers starting on August 14 that threaten immediate and irreparable harm to San Miguel and violate several, legally-effective lease, easement, surface use, and right-of-way agreements between the Peelers and San Miguel (hereinafter, "Peeler Violations" and "Peeler Threatened Violations").

24. The Peeler Violations to date include (quotations are from Peeler August 10, 2018 letter):

- The Peelers' notification to the Evergreen Underground Water Conservation District alleging that San Miguel would no longer have legal control of the leasehold acreage which "may impact San Miguel's groundwater production rights." and
- The Peelers' notification of the Atascosa County Sheriff "of San Miguel's eviction from the Mineral Lease acreage" which, in the absence of a colorable claim to support that conclusion, constitutes a false report to a peace officer.

25. The Peeler Threatened Violations from the August 10, 2018 letter include:

- The Peelers "will be installing fencing, signage, and game cameras to protect their property and enforce the boundaries;"
- The Peelers will deny "access to the water control facilities referred to in Amendment 6 after August 14;"
- Other than the Haul Road, which the Peelers state is the "only roadway" San Miguel may continue to use for ingress and egress from the plant to contiguous properties as

necessary for mining operations, the Peelers will apparently deny access to other roadways; and

- Beginning on August 20, the Peelers, through “AM Peeler Ranch, LLC,” will be “taking control over and sampling the groundwater monitoring wells installed by [San Miguel].”

26. The Peeler Violations and Peeler Threatened Violations stand to cause immediate and irreparable harm to San Miguel and its member cooperatives, ratepayers, employees and contractors by materially interfering in San Miguel’s ability to comply with applicable laws, regulations, and permits and by preventing San Miguel from conducting activities critical to ongoing lignite mining and electric power generation operations. Lack of access could result in San Miguel being cited by regulatory agencies for violations of environmental laws and regulations and subject San Miguel to fines and other penalties. Additionally, the threat to take over San Miguel’s groundwater monitoring wells is especially problematic as improper operation of groundwater monitoring wells can cause groundwater to be inadvertently contaminated. Examples of additional activities that will be impaired by the Peeler Threatened Violations and thereby threaten irreparable harm include the following:

Access to Comply with Legal Requirements Applicable to the Peeler Property.

- The nature of the past mining, ongoing reclamation, and ancillary activities on the Peeler Property obligates San Miguel to an extensive set of legal requirements that necessitate continued access to the Peeler Property. A representative list of these requirements is discussed below in the context of the regulatory programs and agencies that oversee them.
- Mine Reclamation Activities Regulated by the Texas Railroad Commission (RRC) and Office of Surface Mining (OSM) . As set out in the map attached as Exhibit “3”, several lignite removal areas are at various stages of reclamation under the timelines, technical requirements, and oversight of the Railroad Commission of Texas and the Office of Surface Mining within the United States Department of the Interior. The reclamation of these areas is governed by an extensive set of statutory and regulatory provisions, including Texas Natural Resources Code Chapter 134 -Texas Surface Coal Mining and Reclamation Act and 16 Texas Administrative Code (TAC) Chapter 12. Chief among these reclamation requirements is an extensive set of reclamation performance standards which necessitate San Miguel’s continued access to the Peeler Property to conduct sampling, data collection and other

activities in support of their compliance with 16 TAC 12.384 - .388 (backfilling and grading requirements), 12.389 (stabilization of surface area requirements), and 12.390 - .395 (revegetation requirements). This includes the “Final Pit” in “Area A” where San Miguel continues to conduct operations in compliance with all applicable legal requirements to ultimately achieve “approximate original contour (AOC)” and bond release. Lease documents applicable to this area specifically provide for the ability of San Miguel to bring materials from off-site (e.g. coal combustion residuals) and San Miguel must have continuous access to the Peeler Property to conduct these activities. Failure to conduct these activities could be the basis for enforcement actions by regulatory agencies. . For example, Peeler Lease Amendment 2, paragraph VI, states in relevant part as follows: “[a]ny materials returned from the plant site for burial in the excavated areas must be covered by at least ten feet (10 ft.) of subsoil . . . in order to prevent any leaching of obnoxious acids or chemicals” Failure to conduct these activities could be the basis for enforcement actions by regulatory agencies.

Other Structures Located on the Peeler Property Governed by Environmental Regulations.

- In addition to the reclamation requirements applicable to properties that have been disturbed for lignite removal, there are several other supporting/ancillary structures authorized by lease and other agreements with the Peelers that San Miguel was required by various environmental regulations to construct, maintain, and monitor. Those structures include the following:
 - Water Control Facilities Regulated by the RRC/OSM, the Texas Commission on Environmental Quality (TCEQ) and the United States Environmental Protection Agency (EPA). Water control facilities are regulated as part of the overarching RRC/OSM reclamation regulations, and are concurrently regulated by the TCEQ and EPA through a permitting program administered under the Federal Clean Water Act and the Texas Water Code. EPA has delegated this water quality permitting program authority to TCEQ, which is administered in Texas as the Texas Pollution Discharge Elimination System (TPDES) program. RRC rules require surface water management and control, including the construction, maintenance, and monitoring of sedimentation ponds which are concurrently governed by the TCEQ through a TPDES permit. Ponds 1, 3, 5, 6, 7, 9B, 10, and 11 are the RRC and TCEQ -regulated sedimentation ponds located on the Peeler Property. Among other requirements, San Miguel has an obligation to inspect the ponds, and monitor discharges from outfalls associated with these ponds. RRC regulations 16 TAC 12.148, 12.347(a)(11), and 12.354 require various pond inspections, maintenance, monitoring and renovation activities. Without access to these ponds, San Miguel will be in violation of these requirements. TCEQ regulates these ponds under TPDES Permit No. WQ000204300, the terms of which San Miguel cannot comply with, unless San Miguel continues to have access to the Peeler Property to inspect, maintain, and monitor these ponds and their associated outfalls. Failure to do so would be a violation of the TPDES permit as well as 30 TAC 305.125(1) of the TCEQ regulations which would subject San Miguel to fines and other penalties.

- Other Diversions & Impoundments. In addition to the above-referenced sedimentation ponds, RRC regulations govern other diversions, impoundments and temporary structures – many of which are located on the Peeler Property as part of the ongoing reclamation activities. Without access to these structures, San Miguel cannot comply with the requirements of 16.148 and 16.354 governing the operation, maintenance, and ultimate removal of these structures.
- Groundwater Monitoring Wells. RRC regulations have extensive requirements to construct, maintain, and monitor groundwater monitoring wells. Without access to the extensive groundwater monitoring well network on the Peeler Property, San Miguel will not be able to comply with 16 TAC 16.146 and 16.348.
- Wetlands Regulated by the United States Army Corps of Engineers (USACE). San Miguel has USACE permits issued under Section 404 of the Federal Clean Water Act that require access to the Peeler Property to conduct activities necessary to prepare annual and status reports.
- Roads and Ramp Dust suppression – RRC and the Mine Safety and Health Administration (MSHA) require dust to be suppressed on certain roads and ramps. Without such access, San Miguel will be in violation of 16 TAC 16.400(b) (Roads) as well as MSHA regulations promulgated under the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended by the MINER Act of 2006.

27. In addition to the access needed to comply with applicable legal requirements, San Miguel must have access to various parts of the Peeler Property in order to ensure the consistent production and delivery of fuel from the lignite mine so the electric generation plant can continuously produce the 410 megawatts of electricity depended upon by over 205,000 households. Moreover, historically thin reserve margins in the Texas electric grid this summer make risky any action that could result in an interruption or reduction of power generation at the San Miguel facility. As well documented in recent reports by the Electric Reliability Council of Texas (ERCOT), reserve margins are expected to fall well below the recommended levels to prevent brownouts and blackouts in the Texas grid. Under several scenarios modeled by ERCOT, the reserve margins (or cushion) are expected to thin so much that unavailability of a single plant the size and in the location of the San Miguel plant could put at risk the reliability of

the Texas grid. Among the operations for which San Miguel has clear legal rights and essential operational needs are the following:

- Carrizo Water Wells on Peeler Property. San Miguel holds warranty deeds and access easements for three platted wells on the Peeler Property. Denying access to them will prevent San Miguel operations personnel from conducting their operational checks, which are conducted every 12 hours due to the critical role they play in supplying make-up water to the plant boiler and cooling towers essential to the generation of electricity.
- Access to Electric Transmission Lines that Transect Peeler Property. San Miguel has 69kV power lines for which transmission easements are held that provide power to critical mine equipment (large draglines). Barring access to those lines during an outage to make repairs would take the draglines out of service, resulting in a loss of lignite production. A loss of lignite production necessarily interrupts lignite deliveries to the electric generation plant and, as a result, would force the plant to significantly reduce output or shut down.
- Dragline Erection Site. The mine dragline erection site is located within the Peeler Property and is governed by the October 29, 1976 Easement described in Paragraph 21 above. Stored on that site are truck tires and other critical pieces of equipment that are necessary to support ongoing mining and reclamation operations.
- The Reclamation and Surveying Office. Located on the Peeler Property in compliance with the Peeler Agreements is a satellite office where reclamation and surveying staff are located. In addition, tractors, implements, GPS and internet equipment, are all located at this office so access is critical to support ongoing mining and reclamation activities.
- Dragline Walkway Path. The path to move draglines from the Harrison BX tract to the South Leases transacts the Peeler lease. Barring access to the dragline walkway will result in the stranding of the dragline assets and reduction in lignite production, leading to a curtailment of plant output or requiring the plant to be taken out of service. It is important to point out that this walkway is a highly engineered structure that requires a special design to withstand the extraordinary weight of the draglines. The haul road the Peeler has indicated they will grant access to is not designed for and cannot serve as a dragline walkway.

28. Defendants' actual and threatened interference with San Miguel's access to the Peeler Lease has required San Miguel to engage legal counsel to enforce and protect its rights and interests against Defendants. As such, San Miguel has necessarily incurred attorneys' fees, costs and expenses in this matter.

29. All conditions precedent to San Miguel's recovery have been performed and/or have occurred, and San Miguel is entitled to recovery thereon.

CAUSES OF ACTION

First Cause of Action – Declaratory Judgment

30. San Miguel re-alleges and incorporates herein the foregoing allegations of this Petition.

31. As set forth above, an actual and ongoing dispute exists between San Miguel and Defendants with respect to San Miguel's right to enter onto the Peeler Lease for the express purposes permitted under the lease and amendments as well as the additional deeds, easements and agreements as described above. Such controversy involves San Miguel's express rights under the various agreements. The relevant circumstances and law make the dispute about access to the Peeler Leased premises ripe for a decision by this Court.

32. Accordingly, pursuant to TEX. CIV. PRAC. & REM. CODE § 37.001 *et seq.*, San Miguel respectfully requests that this Court issue a judicial declaration determining and adjudging all of San Miguel's express and implied rights to access and use of the Peeler Lease premises. Specifically, San Miguel seeks a declaration that, under the Peeler Leases and other deeds and easements described above, San Miguel has the right to unfettered access and use the Peeler Lease, without interference by Defendants, for the purposes of conducting all permissible operations, including ongoing reclamation activities, monitoring activities, regulatory compliance activities, and any other usage authorized by the Peeler Lease and the various other agreements, deeds and easements. This further includes without limitation, San Miguel's access and use for the purposes of entering upon, testing, investigating, exploring, prospecting, by use of core drills or otherwise, drilling, excavating, mining by any methods deemed desirable by San

Miguel, including but not limited to sinking shafts or by open pit or strip mining, producing, storing and transporting coal and lignite, and all minerals necessarily produced in association therewith, with rights of ingress, egress and regress to, on, over and across the Tract for all such purposes, including, but not by way of limitation, the building of roads, railroads, tram roads, conveyor systems, transportation pipelines, rights of way and necessary easements therefor, building electric transmission lines, pipelines, telephone lines and other structures thereon, producing, saving, taking care of, storing, treating, disposing, processing, and transporting coal and lignite, and all minerals necessarily produced in association therewith, and the products and derivatives thereof, and/or created therefrom, including the return of San Miguel's coal combustion by-products resulting from use of coal and lignite to the Tract.

33. Additionally, in an effort to have the Court protect its rights by declaratory judgment, San Miguel has been forced to engage the representation of counsel and to incur reasonable and necessary attorneys' fees. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, San Miguel seeks the recovery of its reasonable and necessary attorneys' fees, costs and expenses incurred in this action.

Second Cause of Action – Application for Temporary Restraining Order

34. San Miguel realleges and incorporates herein the foregoing allegations of this Petition.

35. As set forth above and in the Affidavit of Michael Kezar which is filed in support of this Application for Temporary Restraining Order and Request for Temporary Injunction, San Miguel will suffer immediate and irreparable injury, loss or damage if the Court does not issue a Temporary Restraining Order, prior to notice being served to Defendants, that restrains Defendants, and any person acting in concert with Defendants, from interfering with or

otherwise prohibiting San Miguel from entering upon, accessing, and conducting all permissible operations, including ongoing reclamation activities, monitoring activities, regulatory compliance activities, and any other usage authorized by the Peeler Lease and the various other agreements, deeds and easements.

36. Defendants' improper actual and threatened denial of access to the Tract has caused and continues to cause San Miguel imminent harm with each passing day as described in detail above. If Defendants, and/or any person acting in concert with them, are permitted to deny San Miguel's unfettered access to the Peeler Lease premises, there will be an immeasurable and irreparable impact and damage upon and to San Miguel. Indeed, San Miguel has no adequate remedy at law in that San Miguel will be forced to prematurely cease mining operations and close the electric generating plant. The resulting damages and suspected damage to the Texas power supply during these crucial summer months of high demand are difficult to calculate in monetary damages.

37. Furthermore, by enjoining Defendants' wrongful actions, the Court will only be maintaining the status quo until such time as the matter can be adjudicated on the merits. If the status quo is not maintained and San Miguel and its agents and/or invitees are not given unfettered access to the Tract, will suffer an imminent and irreparable injury to which there is no adequate remedy at law.

38. Additionally, because of the probable threat of irreparable injury to real or personal property, injunctive relief is appropriate irrespective of any remedy at law. Specifically, by obtaining unfettered access to the Peeler Lease, San Miguel and its agents and/or invitees will be able to conduct San Miguel's necessary operations, preventing irreparable injury to real property. Accordingly, San Miguel is not required to prove there is no adequate remedy at law.

TEXAS CIVIL PRACTICE AND REMEDIES CODE § 65.011(5). Moreover, interference with the free exercise of the unchallenged right to the use of one's property destroys, to the extent of the interference, the property itself, which causes an irreparable injury and justifies injunctive relief. See *Craft v. Freeport Oil Co.*, 563 S.W.2d 866, 868 (Tex. Civ. App.—Amarillo 1978, no writ). The harm that San Miguel is suffering and will suffer if Defendants are allowed to continue to prohibit San Miguel from accessing the Peeler Lease premises far outweighs any potential harm Defendants would suffer from the issuance of injunctive relief in this matter.

39. Finally, because San Miguel has a lawful right to access the Peeler Lease under the leases and amendments as well as the associated deeds and easements, San Miguel has a strong likelihood of success on the relief it seeks in this suit.

40. Accordingly, San Miguel requests that the Court issue a temporary restraining order, without notice to Defendants, which enjoins Defendants, their family members, agents, servants, employees, representatives and all other persons in active concert or participation with them, including the Atascosa County Sheriff's office who receive actual notice of the Temporary Restraining Order from doing or participating in any of the following acts:

- a. Refusing to allow San Miguel and its representatives, agents, employees, invitees, contractors and subcontractors (collectively, the "Invitees"), to use the Peeler Lease premises for the purposes of coal and lignite exploration, development, drilling, mining, production, reclamation and related activities;
- b. Interfering or attempting to interfere with the free and uninterrupted use of, or access to, the Peeler Lease by San Miguel;
- c. Placing or attempting to place any gates or obstructions upon the Tract that would interfere with San Miguel and its Invitees' access; and
- d. Placing or attempting to place any locks or obstructions upon gates on the Peeler Lease that would interfere with San Miguel's and its

Invitees' existing access, or removing any locks of San Miguel and its Invitees on gates on the lease.

41. Defendants are represented by counsel and San Miguel's counsel has provided via e-mail a copy of this Petition and the application for Temporary Restraining Order.

Third Cause of Action – Request for Temporary Injunction and Permanent Injunction

42. San Miguel realleges and incorporates herein the foregoing allegations of this Petition.

43. As set forth above, San Miguel will suffer imminent and irreparable harm if the Court does not preserve the status quo and immediately issue a temporary restraining order, and after a hearing, a temporary injunction, restraining Defendants and any person acting in concert with them from prohibiting San Miguel's unfettered access to the Peeler Lease premises.

44. Thus, in addition to the temporary restraining order, San Miguel requests that upon a hearing, a temporary injunction be issued continuing the conditions and restraints of the Court's temporary restraining order. San Miguel further requests that, upon a final judgment on the merits, the Court issue a permanent injunction that continues all conditions and restraints of the temporary injunction that San Miguel seeks.

45. Accordingly, San Miguel requests that the Court grant a temporary injunction and permanent injunction which enjoin Defendants, their family members, agents, servants, employees, representatives and all other persons in active concert or participation with them, including the Atascosa County Sheriff's Office who receive actual notice of the Temporary Injunction from doing or participating in any of the following acts:

- a. Refusing to allow San Miguel and its representatives, agents, employees, invitees, contractors and subcontractors (collectively, the "Invitees"), to use the Peeler Lease premises for the purposes

of coal and lignite exploration, development, drilling, mining, production, reclamation and related activities;

- b. Interfering or attempting to interfere with the free and uninterrupted use of, or access to, the Peeler Lease by San Miguel;
- c. Placing or attempting to place any gates or obstructions upon the Tract that would interfere with San Miguel and its Invitees' access; and
- d. Placing or attempting to place any locks or obstructions upon gates on the Peeler Lease that would interfere with San Miguel's and its Invitees' existing access, or removing any locks of San Miguel and its Invitees on gates on the lease.

**Fourth Cause of Action – Tortious Interference with Existing Contracts
Against Defendant, AM Peeler Ranch, LLC**

46. San Miguel realleges and incorporates herein the foregoing allegations of this Petition.

47. San Miguel brings this counterclaim against AM Peeler Ranch, LLC for wrongful interference with existing contracts between San Miguel and the predecessors of Alonso M. Peeler, Jr and Barbara Gene Peeler.

48. As shown herein, San Miguel has valid, binding and continuing contracts with Defendants, including, without limitation, the Peeler Lease. Defendants, however, have alleged that the express permission of AM Peeler Ranch, LLC is required before San Miguel can enter any if its leasehold acreage in the future.

49. Additionally, Defendants alleged that, beginning on August 20, 2018, the Peelers, through AM Peeler Ranch, LLC, will be “taking control over and sampling the groundwater monitoring wells installed by [San Miguel].” As shown herein, RRC regulations have extensive requirements to construct, maintain, and monitor groundwater monitoring wells. Without access

to the extensive groundwater monitoring well network on the Peeler Property, San Miguel will not be able to comply with 16 TAC 12.146 and 12.348.

50. Accordingly, the foregoing acts and omissions amount to a wrongful and interference, done willfully and intentionally, with San Miguel's valid, binding, and continuing contracts. Such interference has proximately caused San Miguel's injuries which have and will result in actual damage and loss to San Miguel.

51. Consequently, San Miguel is entitled to recover its actual, general, special and consequential damages, as well as court costs, from and against Defendant AM Peeler Ranch, LLC.

PRAYER

WHEREFORE, San Miguel respectfully prays that:

A. A temporary restraining order be issued to Defendants, restraining and enjoining Defendants, their agents, servants and employees and all persons in active concert or participation with Defendants, including the Atascosa Sheriff's Office, from:

1. Refusing to allow San Miguel and its representatives, agents, employees, invitees, contractors and subcontractors (collectively, the "Invitees"), to use the Peeler Lease premises for the purposes of coal and lignite exploration, development, drilling, mining, production, reclamation and related activities;
2. Interfering or attempting to interfere with the free and uninterrupted use of, or access to, the Peeler Lease by San Miguel;
3. Placing or attempting to place any gates or obstructions upon the Tract that would interfere with San Miguel and its Invitees' access; and
4. Placing or attempting to place any locks or obstructions upon gates on the Peeler Lease that would interfere with San Miguel's and its Invitees' existing access, or removing any locks of San Miguel and its Invitees on gates on the lease.

B. Defendants be cited to appear and show cause, and that upon such hearing, a temporary injunction be issued continuing the conditions and restraints of the Court's temporary restraining order;

C. A permanent injunction be issued on final trial of this action continuing the conditions and restraints of the Court's temporary injunction;

D The Court declare that, under the Peeler Lease and associated deeds and easements and applicable law, San Miguel has an express and implied right to access and use the Peeler Lease premises, without direct or indirect interference by Defendants, for all purposes authorized by the Peeler Lease and associated deeds and easements, including but not limited to entering upon, testing, investigating, exploring, prospecting, by use of core drills or otherwise, drilling, excavating, mining by any methods deemed desirable by San Miguel, including but not limited to sinking shafts or by open pit or strip mining, producing, storing and transporting coal and lignite, and all minerals necessarily produced in association therewith, with rights of ingress, egress and regress to, on, over and across the Tract for all such purposes, including, but not by way of limitation, the building of roads, railroads, tram roads, conveyor systems, transportation pipelines, rights of way and necessary easements therefor, building electric transmission lines, pipelines, telephone lines and other structures thereon, producing, saving, taking care of, storing, treating, disposing, processing, and transporting coal and lignite, and all minerals necessarily produced in association therewith, and the products and derivatives thereof, and/or created therefrom, including the return of San Miguel's coal combustion by-products resulting from use of coal and lignite to the Tract; as well as all activities necessary for reclamation of the excavated areas and compliance with all state and federal regulatory requirements, including monitoring and reporting requirements.

- E. The Court award San Miguel its costs and attorneys' fees incurred herein;
- F. The Court award San Miguel its actual, incidental and consequential damages;
- G. The Court award pre-judgment and post-judgment interest at the maximum rate, if
and as allowed by law; and
- H. The Court award San Miguel such other and further relief, general or special, at
law or in equity, to which it shows itself justly entitled.

Respectfully submitted,

DYKEMA COX SMITH
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By: /s/ James Marty Truss

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ATTORNEYS FOR PLAINTIFF,
SAN MIGUEL ELECTRIC COOPERATIVE, INC.

TAB 1

tracts of land in Atascosa and McMullen Counties in support of San Miguel's mining and electric generation activities.

2. San Miguel is successor to the original lessee of a Coal, Lignite and Mineral Lease dated August 15, 1953 from Defendants' predecessors (The "Peeler Lease"). The Peeler Lease has been amended seven times between 1953 and the present and currently covers approximately 6,300 acres in Atascosa County. In addition to the Peeler Lease and amendments, San Miguel and Defendants are parties to various other deeds, easements and agreements governing access to and use of the Peeler Lease premises. A partial list of these leases, amendments, deeds, easements and other agreements between San Miguel and Defendants is as follows:

- A. Coal, Lignite and Mineral Lease dated August 15, 1953 between A. M. Peeler and James F. Gray
- B. Lease Amendment to Coal, Lignite and Mineral Lease dated August 24, 1966
- C. Lease Amendment No. 2 to Coal, Lignite and Mineral Lease dated September 23, 1975
- D. Lease Amendment No. 3 to Coal, Lignite and Mineral Lease dated February 4, 1976
- E. Lease Amendment No. 4 to Coal, Lignite and Mineral Lease dated November 10, 1976
- F. Lease Amendment No. 5 to Coal, Lignite and Mineral Lease dated June 12, 1978
- G. Lease Amendment No. 6 to Coal, Lignite and Mineral Lease dated July 10, 1981
- H. Lease Amendment No. 7 to Coal, Lignite and Mineral Lease dated October 1, 1981
- I. Transmission Line Easement dated November 9, 1979 from Grantor Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler to Grantee San Miguel Electric Cooperative, Inc.

- J. Warranty Deed and Easement for Water Well Sites dated November 9, 1979 from Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler to San Miguel Electric Cooperative, Inc.
 - K. Easement dated October 29, 1976 between Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler and Brazos Electric Power Cooperative, Inc. and South Texas electric Cooperative, Inc.
 - L. Amended Easement No. 1 dated March 23, 1977
 - M. Amended Easement No. 2 dated January 18, 1980
 - N. Amended Easement No. 3 dated February 15, 2001
 - O. Memorandum Giving Notice of a Flood Easement dated January 1, 1994 between Alonzo M. Peeler, Jr. and Wife, Barbara Gene Peeler and San Miguel Electric Cooperative, Inc.
 - P. Easement dated December 16, 1993 between Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler and San Miguel Electric Cooperative Co.
 - Q. Lease Agreement dated November 24, 1975 between Alonzo M. Peeler, Jr. and Wife, Barbara Gene Peeler and San Miguel Electric Cooperative, Inc.
3. True and correct copies of items A, C, G, and I through Q are attached as Exhibits hereto and incorporated by reference.
4. Pursuant to the Peeler Lease and these various other agreements, San Miguel has mined lignite from the Peeler Lease premises and other contiguous or nearby lands and has further used the premises as authorized by the Peeler Lease for reclamation and required monitoring activities. San Miguel has also used portions of the Peeler Lease premises as specifically authorized in the various other agreements to support mining operations on other lands and to

support operations of the electric generating plant. San Miguel has expended and continues to expend many tens of millions of dollars mining and in reclamation of the Peeler Lease and erecting and maintaining various roads, water wells, retention ponds, transmission lines and other facilities as authorized by the Peeler lease and associated agreements. While mining for lignite on the Peeler Lease premises has ceased, San Miguel is currently engaged in ongoing mining on other nearby properties as well as ongoing reclamation of the Peeler Lease premises. San Miguel has complied with the Peeler Lease and other agreements in all material respects.

5. Except as discussed separately below, these various leases, easements, and surface use agreements will be referenced collectively as the “Peeler Agreements.”

6. On August 10, 2018 at 5:01 PM, I received an email copy of a letter from Mary Whittle, attorney for Alonzo and Barbara Gene Peeler announcing her client’s belief that, on August 14, 2018, any leasehold, tenancy, or license that San Miguel holds for properties owned by the Peelers will expire. Ms. Whittle announced several actions that (a) had already been taken and (b) would be taken by the Peelers starting on August 14 that threaten immediate and irreparable harm to San Miguel and violate several, legally-effective lease, easement, surface use, and right-of-way agreements between the Peelers and San Miguel (hereinafter, “Peeler Violations” and “Peeler Threatened Violations”).

7. The Peeler Violations to date include (quotations are from Peeler August 10, 2018 letter):

A. The Peelers’ notification to the Evergreen Underground Water Conservation District alleging that San Miguel would no longer have legal control of the leasehold acreage which “may impact SMECT’s groundwater production rights” and

B. The Peelers' notification of the Atascosa County sheriff "of SMECI's eviction from the Mineral Lease acreage" which, in the absence of a colorable claim to support that conclusion, constitutes a false report to a peace officer.

8. The Peeler Threatened Violations that are to occur beginning after midnight on August 14, 2018, include (quotations are from Peeler August 10, 2018 letter):

A. The Peelers "will be installing fencing, signage, and game cameras to protect their property and enforce the boundaries;"

B. The Peelers will deny "access to the water control facilities referred to in Amendment 6 after August 14;"

C. Other than the Haul Road, which the Peelers state is the "only roadway" San Miguel may continue to use for ingress and egress from the plant to contiguous properties as necessary for mining operations, the Peelers will apparently deny access to other roadways; and

D. Beginning on August 20, the Peelers, through "AM Peeler Ranch, LLC," will be "taking control over and sampling the groundwater monitoring wells installed by [San Miguel]."

9. The Peeler Violations and Peeler Threatened Violations stand to cause immediate and irreparable harm to San Miguel and its member cooperatives, ratepayers, employees and contractors by materially interfering in San Miguel's ability to comply with applicable laws, regulations, and permits and by preventing San Miguel from conducting activities critical to ongoing lignite mining and electric power generation operations. Examples of activities that will be impaired by the Peeler Threatened Violations and thereby threaten irreparable harm include the following:

A. Access to Comply with Legal Requirements Applicable to the Peeler Property. The nature of the past mining, ongoing reclamation, and ancillary activities on the Peeler Property obligates San Miguel to an extensive set of legal requirements that necessitate continued access to the Peeler Property. A representative list of these requirements is discussed below in the context of the regulatory programs and agencies that oversee them:

- I. Mine Reclamation Activities Regulated by the Texas Railroad Commission (RRC) and Office of Surface Mining (OSM) . As set out in the map attached as Exhibit 1, several lignite removal areas are at various stages of reclamation under the timelines, technical requirements, and oversight of the Railroad Commission of Texas and the Office of Surface Mining within the United States Department of the Interior. The reclamation of these areas is governed by an extensive set of statutory and regulatory provisions, including Texas Natural Resources Code Chapter 134 - Texas Surface Coal Mining and Reclamation Act and 16 Texas Administrative Code (TAC) Chapter 12. Chief among these reclamation requirements is an extensive set of reclamation performance standards which necessitate San Miguel's continued access to the Peeler Property to conduct sampling, data collection and other activities in support of their compliance with 16 TAC 12.384 - .388 (backfilling and grading requirements), 12.389 (stabilization of surface area requirements), and 12.390 - .395 (revegetation requirements). This includes the "Final Pit" in "Area A" where San Miguel continues to conduct operations in compliance with all applicable legal requirements to ultimately achieve "approximate original

contour (AOC)” and bond release. Lease documents applicable to this area specifically provide for the ability of San Miguel to bring materials from off-site (e.g. coal combustion residuals) and San Miguel must have continuous access to the Peeler Property to conduct these activities. For example, Peeler Lease Amendment 2, paragraph VI, states in relevant part as follows: “[a]ny materials returned from the plant site for burial in the excavated areas must be covered by at least ten feet (10 ft.) of subsoil . . . in order to prevent any leaching of obnoxious acids or chemicals” Failure to conduct these activities could be the basis for enforcement actions by regulatory agencies.

II. Other Structures Located on the Peeler Property Governed by Environmental

Regulations. In addition to the reclamation requirements applicable to properties that have been disturbed for lignite removal, there are several other supporting/ancillary structures authorized by lease and other agreements with the Peelers that San Miguel was required by various environmental regulations to construct, maintain, and monitor. Those structures include the following:

- i. Water Control Facilities Regulated by the RRC/OSM, the Texas Commission on Environmental Quality (TCEQ) and the United States Environmental Protection Agency (EPA). Water control facilities are regulated as part of the overarching RRC/OSM reclamation regulations, as well as concurrently regulated by the TCEQ and EPA through a permitting program administered under the Federal Clean Water Act and the Texas Water Code. EPA has delegated this water quality permitting program authority to TCEQ, which is administered in Texas

as the Texas Pollution Discharge Elimination System (TPDES) program. RRC rules require surface water management and control, including the construction, maintenance, and monitoring of sedimentation ponds which are concurrently governed by the TCEQ through a TPDES permit. Ponds 1, 3, 5, 6, 7, 9B, 10, and 11 are the RRC and TCEQ -regulated sedimentation ponds located on the Peeler Property. Among other requirements, San Miguel has an obligation to inspect the ponds, and monitor discharges from outfalls associated with these ponds. RRC regulations 16 TAC 12.148, 12.347(a)(11), and 12.354 require various pond inspections, maintenance, monitoring and renovation activities. Without access to these ponds, SMECI will be in violation of these requirements. TCEQ regulates these ponds under TPDES Permit No. WQ000204300, the terms of which San Miguel cannot comply with unless San Miguel continues to have access to the Peeler Property to inspect, maintain, and monitor these ponds and their associated outfalls. Failure to do so would be a violation of the TPDES permit as well as 30 TAC 305.125(1) of the TCEQ regulations.

- ii. Other Diversions & Impoundments. In addition to the above-referenced sedimentation ponds, RRC regulations govern other diversions, impoundments and temporary structures – many of which are located on the Peeler Property as part of the ongoing reclamation activities. Without access to these structures, San Miguel cannot comply with the

requirements of 12.148 and 12.354 governing the operation, maintenance, and ultimate removal of these structures.

- iii. Groundwater Monitoring Wells. RRC regulations have extensive requirements to construct, maintain, and monitor groundwater monitoring wells. Without access to the extensive groundwater monitoring well network on the Peeler Property, San Miguel will not be able to comply with 16 TAC 12.146 and 12.348. Equally as troubling is the threat by the Peelers to ‘take control over’ the groundwater monitoring wells installed by San Miguel. Not only would such an action by the Peelers’ put San Miguel at risk of noncompliance with applicable RRC regulations, there is no assurance that the highly technical groundwater sampling techniques will be properly followed by the Peelers, which could result in groundwater cross-contamination issues.
- iv. Wetlands Regulated by the United States Army Corps of Engineers (USACE). San Miguel has USACE permits issued under Section 404 of the Federal Clean Water Act that require access to the Peeler Property to conduct activities necessary to prepare annual and status reports.
- v. Roads and Ramp Dust suppression – RRC and the Mine Safety and Health Administration (MSHA) require dust to be suppressed on certain roads and ramps. The Easement agreement cited above at paragraph 2(M) also specifically requires San Miguel to “use diligence and care through watering, or other means reasonably necessary, to keep down

dust” resulting from the use of expressly authorized haul roads. Without such access, San Miguel will be in violation of 16 TAC 12.400(b) (Roads) as well as MSHA regulations promulgated under the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended by the MINER Act of 2006.

- vi. Water Storage and Blending Ponds, Class 5 Injection Wells, and Electrical Substations Critical to Support Depressurization Wells, their Water Management and Dust Suppression Supply. San Miguel’s RRC permit requires an extensive depressurization well network, as well as dust suppression and lighting on a wide network of roads, ramps and other active areas. These are only accomplished through a series of ponds, pipes, pumps, lights, and wells. For example, barring access to Pond L on the lease, the HDPE pipeline that runs from Pond L to Pond 27, the blending setup at Pond 27, as well as the Class 5 injection wells that exist on the lease, would preclude San Miguel from discharging its RRC permit obligations to conduct pressurization and dust suppression activities. Relatedly, electrical substations at Pond 9B and at the Ramp 10 final pit on the lease provide power to several of the wells and pumps in this system, as well as the required lighting for roads, ramps and other active areas. If any of these activities are curtailed due to access being denied, it would endanger compliance with all of the above-referenced RRC permit requirements, many of which relate to key safety considerations. Most notably, jeopardizing the depressurization system

risks pit flooding due to excessive pressure from the Unit 22 formation, leading to risk exposure for miners, an inability to mine lignite, and the resulting curtailment of the San Miguel power generation plant.

B. Access to Facilities Critical to the Operation of Lignite Mining and Electric Power

Generation. In addition to the access needed to comply with applicable legal requirements, San Miguel must have access to various parts of the Peeler Property in order to ensure the consistent production and delivery of fuel from the lignite mine so the electric generation plant can continuously produce the 410 megawatts of electricity depended upon by over 205,000 households. Moreover, historically thin reserve margins in the Texas electric grid this summer make risky any action that could result in an interruption or reduction of power generation at the San Miguel facility. As well documented in recent reports by the Electric Reliability Council of Texas (ERCOT), reserve margins are expected to fall well below the recommended levels to prevent brownouts and blackouts in the Texas grid.¹ Under several scenarios modeled by ERCOT, the reserve margins (or cushion) are expected to thin so much that unavailability of a single plant the size and in the location of the San Miguel plant could put at risk the reliability of the Texas grid.² Among the operations for which San Miguel has clear legal rights and essential operational needs are the following:

¹ See Electric Reliability Council of Texas, Preliminary Seasonal Assessment of Resource Adequacy for the ERCOT Region (SARA) Summer 2018, March 1, 2018 at 2.

² Under forecasted peak load with typical outages, ERCOT anticipates available summer 2018 capacity for operation reserves under normal operation conditions will be 553 MW. Under scenarios with extreme load, outages, or low wind output, ERCOT models available capacity to drop to between -2,013 MW to -2,844 MW. Available summer capacity for the San Miguel unit is 391 MW, meaning that the loss of the unit would shrink available reserves at peak under normal conditions to less than 200 MW or further aggravate negative capacity conditions under ERCOT's various modeling scenarios. *Id.* at 2-3.

- I. Carrizo Water Wells on Peeler Property. As reflected in the instrument cited in paragraph 2(J) above, San Miguel holds warranty deeds and access easements for four platted wells on the Peeler Property. Denying access to them will prevent San Miguel operations personnel from conducting their operational checks, which are conducted every 12 hours due to the critical role the wells play in supplying make-up water to the plant boiler and cooling towers essential to the generation of electricity.
- II. Dragline Walkway Path. The path to move draglines from the Harrison BX tract to the South Leases transects the Peeler lease. Barring access to the dragline walkway will result in the stranding of the dragline assets and reduction in lignite production, leading to a curtailment of plant output or requiring the plant to be taken out of service. It is important to point out that this walkway is a highly engineered structure that requires a special design to withstand the extraordinary weight of the draglines. The haul road the Peelers have indicated they will grant access to is not designed for and cannot serve as a dragline walkway.
- III. Access to Electric Transmission Lines that Transect Peeler Property. San Miguel has 69kV power lines for which transmission easements are held that provide power to critical mine equipment (large draglines). Barring access to those lines during an outage to make repairs would take the draglines out of service, resulting in a loss of lignite production. A prolonged loss of lignite production necessarily interrupts lignite deliveries to the electric generation

plant and, as a result, would force the plant to significantly reduce output or shut down.

IV. Dragline Erection Site. The mine dragline erection site is located within the Peeler Property and is governed by the October 29, 1976 Easement described above. Stored on that site are truck tires and other critical pieces of equipment that are necessary to support ongoing mining and reclamation operations.

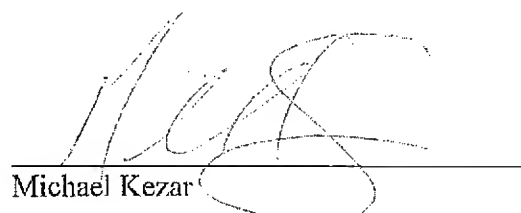
V. The Reclamation and Surveying Office. Located on the Peeler Property in compliance with the Peeler Agreements is a satellite office where reclamation and surveying staff are located. In addition, tractors, implements, GPS and internet equipment are all located at this office, so access is critical to support ongoing mining and reclamation activities.

10. Defendants' actual and threatened interference with San Miguel's access to the Peeler Lease has required San Miguel to engage legal counsel to enforce and protect its rights and interests against Defendants. As such, San Miguel has necessarily incurred attorneys' fees, costs and expenses in this matter.

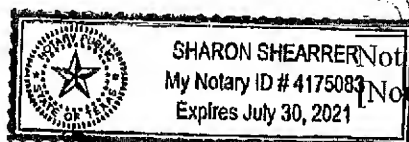
State of Texas County of Atascosa


Further Affiant sayeth not.

Date: August 13, 2018


Michael Kezar

SWORN to and SUBSCRIBED before me, the undersigned authority, on the 13th day of August 2018, by Michael Kezar.




Sharon Shearrer Notary Public, State of Texas [Notary's signature.]
[Notary's seal.]

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2188

COAL, LIGNITE AND MINERAL LEASE

STATE OF TEXAS, :

COUNTY OF ATASCOSA :

THIS AGREEMENT, made this 15th day of August, 1953, between A. M. Peeler (Lessor whether one or more) and James F. Gray, Lessee (Whether one or more),

W I T N E S S E T H :

Lessor in consideration of the sum of Ten (\$10.00) Dollars, and other good and valuable consideration in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee herein contained, hereby grants, leases and lets exclusively unto Lessee for the purposes of entering upon, testing, investigating, exploring, prospecting, by use of core drills or otherwise, drilling, mining by sinking shafts or by strip mining methods, if practicable, producing, transporting coal, lignite, clay and other minerals (except oil or gas), with rights of ingress and egress to, on, over and across the lands covered hereby or unitized herewith or adjoining thereto or that might be located in the general area thereof, for all such purposes, including, but not by way of limitation,

the building of roads, railroads, tram rods, pipe lines, rights of way and necessary easements therefor, building power stations, electric or power transmission lines, pipe lines, telephone lines and other structures (including houses for employees) thereon, producing, saving, taking care of, storing, treating, processing, manufacturing and transporting coal, lignite, clay (except oil and/or gas) and other minerals and the power, products and derivatives thereof, and/or created therefrom, the following described land in Atascosa County, Texas, to-wit:

All of the following described Farm Tracts being out of the Dr. Chas. F. Simmons' 95,000 acre subdivision in Atascosa County, Texas, as per map or plat of said Subdivision of record in Volume 37 of the Deed Records of Atascosa County, Texas, to-wit:

The following Farm Tracts containing ten (10) acres of land, each, more or less:

2919	2959	3387	-3438	3480	3876
2920	2960	3391	-3439	3481	3877
2921	2961	3392	-3441	3482	3878
2922	2962	3393	-3442	3483	3879
2924	2963	3394	-3444	3485	3880
2925	2964	3395	-3446	3488	3881
2927	2965	3396	-3447	3489	3882
2928	2966	3397	-3448	3490	3883
2929	2967	3400	-3449	3491	3884
2931	2969	3403	-3450	3492	3885
2932	2971	3404	-3451	3493	3887
2933	2972	3405	-3452	3494	3889
2934	2973	3406	-3453	3495	3890
2935	2974	3407	-3454	3496	3891
2936	2975	3408	-3455	3498	3892
2937	2976	3410	-3456	3499	3894
--	2977	3411	-3458	3500	3895
2939	2979	3412	-3459	3502	3896
2940	2981	3413	-3461	3503	3897
2944	2982	3415	-3462	3505	3898
2942	2984	3417		3506	3899

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2944	2988	3419	3464	3508	3901
2945	2989	3420	3465	3509	3902
2946	2992	3421	3467	3511	3903
2947	2993	3422	3468	3512	3906
2948	2994	3425	3469	3513	3907
2949	2996	3426	3470	3514	3908
2950	2997	3427	3471	3515	3909
2951	2999	3428	3472	3516	3910
2952	3000	3429	3473	3517	3914
2953	3001	3430	3474	3518	3917
2954	3002	3432	3475	3519	3918
2955	3003	3433	3476	3520	3919
2956	3004	3434	3477	3521	3920
2957	3384	3436	3478	3522	3921
2958	3385	3437	3479	3523	3922
	3386			3524	

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4917
4918

3923	3947	4822	4839	4880	4903
3926	3948	4823	4840	4883	4904
3927	3951	4824	4841	4885	4905
3931	3952	4826	4842	4886	4906
3932	3954	4827	4843	4887	4908
3933	3956	4828	4848	4888	4909
3934	4812	4829	4849	4889	4910
3935	4813	4830	4850	4891	4911
3936	4814	4831	4851	4892	4912
3937	4815	4832	4853	4894	4913
3939	4816	4833	4854	4895	4914
3940	4817	4834	4855	4896	4915
3941	4818	4835	4856	4897	4983
3942	4819	4836	4857	4898	4984
3944	4820	4837	4858	4899	
3945	4821	4838	4859	4900	

The following Farm Tracts containing one hundred sixty (160) acres of land each,

more or less:

6555, 160
6556, 160
6557, 160

ALSO, all that certain tract or parcel of land lying and being situated in Atascosa County, Texas, about twelve miles South 20° East from the town of Jourdanton, Texas, the County seat, and is comprised of 256.0 acres out of the J. R. O'Neil Survey #8, Abstract

2860 Acres Tract
20 Acres Tract
20 Acres Tract
20 Acres Tract

439.93 Acres

800 Acres

#1166, 391.0 acres out of the J. Poitevent Survey #11, Abstract #955, and 53.0 acres out of the E. S. Stout Survey #16, Abstract #1295, and is more particularly described by metes and bounds in one body as follows, to-wit:

BEGINNING at the east corner fence post of the J. R. O'Neil Survey #8, on the Southwest line of the J. Poitevent Sur. #11;

THENCE North 46° 51' East 5790.0 feet to a stake in fence line for the east corner of this tract;

THENCE North 40° 24' West 3910.0 feet with fence line to corner fence post for the north corner of this tract on northwest line of the E. S. Stout Survey #16;

THENCE South 50° 00' West 5865.5 feet with the northwest fence line of the E. S. Stout Survey #16 and J. Poitevent Survey #11 to the north corner fence post of the J. R. O'Neil Survey #8 and west corner of the J. Poitevent Survey #11;

THENCE South 49° 42' West 2635.0 ft. with the Northwest fence line of the J. R. O'Neil Sur. #8 to cor. fence post on same for the west cor. of this tract;

THENCE South 41° 34' E. 4227.0 ft. with fence line to cor. fence post on S. E. line of J. R. O'Neil Sur. #8 for S. cor. of this tract;

THENCE North 49° 49' East 2637.0 ft. with S.E. fence line of J. R. O'Neil Sur. #8 to the place of beginning, containing within above metes and bounds 800.00 acres of land, and being the same land conveyed to A. M. Peeler by J. P. Lewis, et ux, by Warranty Deed dated Feb. 22, 1951, which appears of record in Vol. 208, pp. 313-314 of the Deed Records of Atascosa County, Texas.

ALSO, the following:

a.) 320 acres of land, more or less, being the North West 1/2 of the E. F. Stout

320

Survey #16, Abstract #1295, and being the North West 320 acres of land of that certain 541.33 acre tract out of said Survey set out as "First Tract" in that certain Deed dated December 18, 1947, executed by Margaret A. Lewis in favor of A. M. Peeler, appearing of record in Vol. 191, p. 550 of the Deed Records of Atascosa County, Texas.

b.) 101.37 acres of land, more or less, out of the J. Poitevent Survey #31, Abstract #968, and being the same land described as "Second Tract" in that same certain Deed dated December 18, 1947, executed by Margaret A. Lewis in favor of A. M. Peeler, recorded in Volume 191, pp. 550-551 of the Deed Records of Atascosa County, Texas.

NOTWITHSTANDING, anything to the contrary in this lease hereinbefore or herein-after provided, it is expressly agreed by and between the lessor and lessee that:

a.) This lease shall cover only the coal, lignite, clay and other minerals (except oil or gas) down to a depth of three hundred fifty (350') feet below the surface and no further, and rights of ingress and egress are expressly reserved to the lessor, his heirs or assigns for all purposes necessary for exploration, development and recovery of all oil, and/or gas at any depth or other minerals at a depth of more than 350 feet below the surface, providing, however, that such right of ingress and egress must be exercised so as not to seriously interfere or handicap the Lessee, his heirs or assigns in his operations under the present lease.

b.) The royalties to be paid Lessee on minerals other than lignite which are mined and marketed, under the terms of this lease shall be 1/10th either in kind or value at the well or mine at Lessee's election. The royalties on lignite shall be as hereinafter provided in this lease.

SIGNED FOR IDENTIFICATION:

101.34

5409.30

A. M. Feeler

For the purpose of determining the amount of any bonus, rental or other payment hereunder, the leased premises shall be considered to comprise 4851.37 acres of land, whether they actually contain more or less, and lessor excepts the bonus as a lump sum and likewise agrees to accept the rentals as specified as full and complete consideration for this lease and all rights and options hereunder; provided, however, that in the event Lessee's mining operations disclose that any veins, strata and/or formations mined hereunder extend to and underlie other lands owned by Lessor not covered by this lease but adjoining same, then and in that event, Lessee at his option may acquire such other lands by paying therefor the same price per acre which has been paid by Lessee for the lands covered hereby, and thereupon, the terms hereof shall apply to and cover such other lands and all of the land and interest in land owned or claimed by lessor adjoining the above described land, whether owned or claimed by inheritance, deed, gift, limitation, possession or otherwise, and Lessor agrees to execute and deliver to Lessee any supplemental instrument requested by Lessee for a more complete or accurate description of the leased premises.

II

Subject to the other provisions herein contained, this lease shall remain in force so long as the rentals hereinafter provided for are paid and/or so long as the coal, lignite, clay and other minerals (except oil and gas) are produced from said land hereunder or from the lands unitized therewith in whole or in part, as herein provided.

III

Lessee agrees to pay Lessor, the owners of the lands comprising the unitized or area hereinafter referred to as royalty for all coal, lignite, clay and other minerals (except oil and gas) removed from the lands of lessor or from the unitized area hereinafter

provided for, the sum of Five Cents (5c) per gross ton for each and every gross ton of such coal, lignite, clay and other minerals (except oil and gas), payments therefor to be made monthly on or before the 25th day of each calendar month following the month during which such coal, lignite, clay or other minerals (except oil and gas) have been so removed. Whenever lessee and/or his assigns shall have begun the payment of royalties, as in this lease provided, the amount of annual rentals theretofore paid in advance to lessor for that year shall be deducted from the amount of any royalty payment or payments which lessor would be entitled to receive hereunder.

IV.

If on or before one year from the date hereof, the royalty payable hereunder has not equalled the sum of fifty cents per acre to lessor and/or the owners of the unitized area, then and in that event, lessee shall deposit to credit of Lessor and/or the owners of the unitized area, as the case may be, in the First National Bank at Pleasanton, _____, Texas, such sum, or sums, as may be necessary to make the payment to lessor and/or the owners of the unitized area equal fifty cents per acre for said one-year period, which Bank and its successors are the agents of lessor and the owners of the unitized area and shall continue as the depository of any and all sums payable under this lease, regardless of change of ownership in said land or any lands unitized therewith or in the rentals and royalties accruing hereunder. So long as Lessor's property covered hereby is subject to any valid and existing lease or other instrument reserving to any other party the mineral rights (except oil and gas) under said lands, the annual rental payments provided for herein shall be reduced to ten cents per acre. When such outstanding lease or mineral interest has expired or been released, the annual rentals shall be as set forth in the preceding portions of this paragraph, to-wit, fifty cents per acre. Notwithstanding the death of the lessors.

or either of them, or his or their successors in interest, the payment or tender of rentals and royalties in the manner hereinabove provided shall be binding on the heirs, devisees, executors and administrators of such persons. If such Bank (or any successor bank) should fail or liquidate, or for any reason fail or refuse to accept rental and royalty payments, Second Party or his assigns shall not be held in default for failure to make such payments until thirty days after First Party shall deliver to Second Party or his assigns, a proper recordable instrument naming another bank as agent to receive such payments or tenders.

V.

Lessor and lessee herein agree that this lease is one of several similar leases covering approximately 10,000 acres of land located in Atascosa and McMullen Counties, Texas, or in adjoining counties and that economic and practical considerations require that any and all drilling, excavating and mining operations hereunder be prosecuted in an orderly manner by first conducting such operations on one or more tracts and then extending same to other tracts as lessee's program may require. Therefore, lessee shall never be considered as under obligation or required to do so but is hereby granted the right, power and option to, at any time and from time to time while this lease is in force, pool, unitize and combine the lands covered by this lease, or any portion thereof, as to all or any mineral or minerals or formation or formations thereunder with any other lands, lease or leases, or portions or portions thereof, in the same general area, as to any mineral or minerals, (except oil or gas) formation or formations, so as to create a unit or units of such size in surface acres extending to and including any depth beneath the surface as lessee may desire, not exceeding the total number of 640 acres of land. In the event of unitization herein provided for, lessor agrees that in lieu of royalties elsewhere specified herein, each party having land in any such unit shall be paid royalties by lessee on the total production

of such minerals from such unit, only such portion of the royalties as the amount of lessor's royalty acreage placed in the unit bears to the total acreage in the particular unit involved. Where core tests or other data discloses that the formation or formations unitized hereunder vary in thickness or productivity or quality so as to make it inequitable in the sole opinion of lessee to pay royalties based solely upon the number of surface acres comprising a unit, the lessee shall, at his option, have the right to pay lessor royalties in the proportion that the thickness of the formation or the productivity and quality of the formation or formations under lessor's land bears to the total thickness, productivity and/or quality of said formation or formations underlying the surface of the entire unit, it being the intent and purpose hereof that all the coal, lignite, clay and other minerals covered by this lease or by any lands unitized therewith, may, at lessee's option be treated as a common deposit in which each owner is entitled to share in the proportion that the thickness, productivity and/or quality of the formation or formations constituting the deposit beneath his land bears to the thickness, productivity and/or quality of the total deposit constituting the unit of which his land is a part. Any unit or units shall be created hereunder by lessee executing in writing an instrument identifying the mineral or minerals or formation or formations unitized and describing the acreage included in each unit and filing the same for record in the office of the County Clerk of the county in which said land or a part thereof is located. The entire acreage included in any such unit or units shall be treated for all purposes except the division of rentals and the payment of royalties, as if it were included in this lease.

Lessee shall have the right to terminate any unit created hereunder at any time prior to the production of any unitized mineral or minerals in paying quantities from

the unit and, if such production is obtained in paying quantities, then at any time after the unit ceases to produce any unitized mineral or minerals in paying quantities. If lessee desires to so terminate any such unit, lessee shall sign and acknowledge a written notice of his intentions to terminate same and shall file said termination notice for record in the office of the County Clerk of the county in which said unit or a part thereof is located, and said termination shall become effective as of the date of filing said notice. A unit may be so terminated as to a particular unitized mineral or as to any particular formation without being terminated as to other unitized materials or other formations, the extent of such termination to be stated in said termination notice. The power to create any such unit of any particular size hereunder, or the creation of any such unit shall not be used by lessor or lessee as a factor in applying any implied covenant to develop the premises which may be imposed on lessee hereunder.

VI.

This lease does not cover and is not intended to cover oil and/or gas and the products derived therefrom, including but not by way of limitation, natural gas, casinghead gas, distillate, condensate and other gaseous substances that may be produced from any oil and/or gas well, or wells, as same are defined under the Statutes of the State of Texas and under the existing Rules and Regulations of the Railroad Commission of the State of Texas. On the other hand, this lease covers and includes and is intended to cover and include coal, lignite, clay and all other minerals and products derived therefrom that may be mined by drilling wells that are not oil and gas wells, as herein defined, and/or by sinking shafts and/or by using strip mining methods and/or removing any overburden of earth formation, or formations, and/or by conducting operations in any other manner as in lessee's sole judgment is most desirable and effective.

VII.

It is agreed that should lessee mine the lands covered hereby and unitize hereby with by strip mining or other methods so as to destroy or to deprive lessor or by party owning land in the unit of the use of the surface thereof, lessee will pay to said lessor and/or party, as the case may be, the sum of Sixty and no/100 (\$60.00) Dollars per acre for any portion of the leased or unitized lands the surface of which is so destroyed or rendered useless, plus payments equal to the reasonable market value of any improvements destroyed or rendered useless, which payments shall be made within thirty days after such surface of said lands or said improvements are so destroyed or rendered useless, lessee, however, to have the use of any necessary lands for roadways, railroad rights of way or other easements and rights of ingress and egress elsewhere granted herein that may be reasonably necessary in the mining operations hereunder and in the removal of coal, lignite, clay and/or other minerals from the premises covered hereby or that may be unitized therewith or that may be used hereunder in connection with other lands contiguous to the unit or that may be located in the general area of said unit or contiguous lands without the payment of additional compensation.

VIII.

It is understood between the parties hereto that this lease shall not be forfeited for any failure to prosecute mining operations on the lands hereinabove described or on the lands with which the same may be unitized, nor shall any forfeiture be claimed or enforced for the breach of any implied covenant, but the title to the minerals and the lands hereby leased shall not revert to lessor or his assigns so long as the annual rentals herein provided for are being paid to First Party, or so long as the lands covered hereby, or any of the lands with which same have been unitized, are being mined as herein provided.

IX.

If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the rights, obligations and covenants hereof shall extend to the heirs, administrators, executors or assigns, but no change in ownership of the land or assignment of rentals and other payments due hereunder and of royalties from minerals extracted or removed shall be binding upon lessee or his assigns until he or his assignee has been furnished with the recorded, written transfer or assignment or a certified copy thereof. All payments or tenders of rental hereunder may be made by lessee's checks or drafts mailed to lessor at lessor's last known post office address, or delivered to said lessor or mailed or delivered to the depository bank, or banks, hereunder on or before the date required for the payment of same hereunder; all exchange, collection or other service charges made by any bank on the check or draft, or in giving lessor credit hereunder, to be borne by lessor. If said bank (or either of them, or any successor bank) shall cease to exist, suspend business, liquidate, fail or be succeeded by another bank or for any reason fail or refuse to accept rental, lessee shall not be held in default for failure to make such payment or tender of rental, and the time for payment of rentals shall be automatically extended thirty days (30) days after lessor shall deliver to lessee a proper recordable instrument naming another bank as agent to receive such payments or tenders. Notwithstanding the death, disability or minority of the lessor, or his successors in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors and administrators of such person. In the event of the death, minority, or other disability of any person entitled to receive rentals hereunder, which lessee may desire to pay, it shall be sufficient for lessee to deposit or tender for deposit in a bank herein named such rentals to the credit of the deceased or of the estate of such person

until such time as lessee is furnished with evidence satisfactory to it of the appointment and qualification of a proper representative of the estate of such person, or, if there be no such representative, until lessee shall be furnished with evidence satisfactory to it as to the heirs, devisees or other person or persons entitled to receive any of such rental. If, at any time, two (2) or more persons shall be entitled to participate in the rental payable hereunder, lessee may pay or tender said rental jointly to such persons or to their joint credit in a bank named herein; or, at lessee's election, the proportionate part of said rental to which each participant is entitled may be paid or tendered to such participant separately or to his separate credit in said bank. The payment or tender to any participant of his portion of the rentals hereunder shall maintain this lease as to such participant and as to his interest in the land herein leased. The judgment of lessee, when not fraudulently exercised in carrying out the purposes of this lease, shall be conclusive.

X.

Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, or any other lands unitized therewith. Lessee may at any time and from time to time execute and deliver to lessor or file for record in the office of the County Clerk of the County in which the land covered by this lease, or any part thereof, is located a release, or releases, covering any portion, or portions, of same as to any or all minerals and formation or formations and, thereby, surrender this lease as to such portion, or portions of mineral or minerals or formation or formations and be relieved of all obligations as to the acreage or interest surrendered. If said release, or releases, cover all minerals and formations in any port-

ion, or portions, of said land, then and thereafter the rentals, if any, payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said re-lease, or releases.

XI.

This lease shall never be forfeited, cancelled or terminated for failure by lessee to perform in whole or in part any of its implied obligations, nor while coal, lignite, clay or any other mineral covered hereby is being produced in paying quantities for any cause whatsoever, unless there shall first be a final judicial ascertainment that such obligation or cause exists and that lessee is in default. Upon such final determination, lessee is hereby given a reasonable time thereafter to comply with such obligation, and that lessee's election to surrender the lease, with the option of reserving each producing mine that is being operated or reworked and 640 acres surrounding same in such shape and design as may be designated by lessee that will best conform to the formation or formations being so mined or reworked; and as to such designated acres, this lease shall nevertheless remain in force and effect as to such tract of land at the time of such forfeiture, cancellation or termination.

XII.

In case of suit, adverse claim, dispute or question as to the ownership of the rentals or royalties (or some part thereof) payable under this lease, lessee shall not be held in default in payment of such rentals or royalties (or the part thereof in doubt) until such suit, claim, dispute or question has been finally disposed of, and lessee shall have thirty (30) days after being furnished with the original instrument or instruments disposing of such suit, claim or dispute (or a certified copy or copies thereof), or after being furnished with proof sufficient, in lessee's option, to settle such question, with-

in which to make payment. Should the right or interest of lessee hereunder be disputed by lessor, or any other person, the time covered by the pendency of such dispute shall not be counted against lessee either as affecting the term of the lease or for any other purpose, and lessee may suspend all payments without interest until there is final adjudication or other determination of such dispute.

XIII.

When mining or other operations hereunder are delayed or interrupted by lack of water, labor or material or by fire, storm, flood, war, rebellion, insurrection, riot, strike, differences with workmen or failure of carriers to transport or furnish facilities for transportation, or as a result of some order, requisition, or necessity of the Government, or any political subdivision thereof, or as a result of any cause whatsoever beyond the control of the lessee, the time and result of such delay or interruption shall not be counted against lessee, anything in this lease to the contrary notwithstanding. Non compliance, delay in compliance or incomplete compliance by lessee with any provision of this lease caused by lessee's operating or performing any statute, regulation, rule or order enacted or issued by any governmental authority shall not be considered a default on lessee's part and shall not render lessee liable to lessor for any loss, damage or injury suffered or sustained by lessor on account thereof.

XIV.

Lessor hereby warrants and agrees to defend the title to said land and agrees that lessee, at lessee's option (but without any duty to do so), may pay and discharge in whole or in part any taxes, mortgages or other liens upon said land or any part thereof, and in that event lessee shall be subrogated to such lien with full right to enforce the same, and

in addition thereto may retain for the satisfaction of such lien and interest all royalties or rentals accruing hereunder. Without any impairment of lessee's rights under lessor's warranty of title it is agreed that if lessor owns an interest in the royalties and rentals which may be paid on the land described herein less than the entire and undivided fee simple estate or no interest therein (whether or not the extent of the interest claimed by lessor or the extent of the interest purportedly covered by this lease is herein stipulated) then the royalties and rentals herein provided for shall be paid the said lessor only in the proportion which lessor's interest, if any, bears to the whole and undivided fee. Failure of lessee to reduce rentals paid hereunder shall not impair the right of lessee to reduce royalties.

XV.

This lease shall be binding upon all who execute it, whether or not named in the body thereof as lessors, and without regard to whether this same instrument, or any copy hereof, is executed by any of the other lessors named above.

IN WITNESS WHEREOF, this instrument is executed on the date first herein written.

A. M. Peeler

U.S.I.R.Stamps \$2.75 Cancelled.

STATE OF TEXAS :

COUNTY OF ATASCOSA:

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared A. M. Peeler, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 15 day of August, A.D. 1953.

512

(Seal)

Lucille Rutherford, Notary Public,
in and for Atascosa County, Texas.

Filed for record September 19, A.D., 1953 at 11:00 o'clock A.M. and duly recorded September
29, A.D., 1953 at 4:50 o'clock P.M. in Atascosa County Deed Records, Vol. 226, pages
503-512.

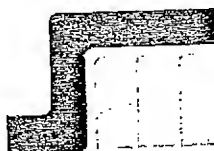
C. W. Martin, Clerk County Court, Atascosa County, Texas.

By

Georgia Zukler

Deputy.

C



310.1164

SAN MIGUEL ELECTRIC COOPERATIVE, INC.

P. O. Box 280, Jourdanton, Texas 78026

ERNEST I. WOHLSCHEGEL
General Manager

August 16, 1979

Dave Snyder
Atascosa Mining Company
San Miguel Lignite Mine

Subject: A.M. Peeler, Jr. - Lease. 310.1164

Dear Dave,

Please find attached a copy of Lease Amendment No. 2 on the A.M. Peeler, Jr., Ranch where the large majority of the mining activities will take place in the first five (5) years. This is provided in order to acquaint you with some of the landowner requirements. Please take special note of the following items.

1. Article V, Paragraph 2, concerning any roads to be constructed on the leased premises.
2. Article V, Paragraph 3, concerning the use of water from the leased premises.
3. Article VI, Paragraph 2, concerning the burial of materials.
4. Article VI, Paragraph 3, concerning the planting or sprigging of grasses.
5. Article VI, Paragraph 4, concerning the lands affected by mining operations. It will be necessary to determine acreages affected by the mining operations on a monthly basis in order to make the necessary surface damage payments to the landowner.
6. Article VI, Paragraph 6, concerning the construction of fences around mining operations.
7. Article VI, Paragraph 7, concerning the use of lands for other than actual mining. It will be necessary to determine acreages on these lands as they are used so the landowner can be paid the proper rental.

AUGUST 16, 1979

Dave Snyder
Atascosa Mining Company

Subject: A.M. Peeler, Jr. - Lease 310.1164

8. Article VII, concerning hunting, fishing or carrying firearms on the leased property.

Sincerely,



Marshall B. Darby
Fuels Engineer

MBD/jas

cc: E.I. Wohlschlegel
Ron Magel
Gerald Camber
MBD Reader

RM

Alonzo M. Peeler, Jr., et ux To Brazos Electric Power Coop., Inc., et al

LEASE AMENDMENT NO. 2

6333
6352

THE STATE OF TEXAS :

COUNTY OF ATASCOSA :

WHEREAS, under date of August 15, 1953, A.M. PEELER, as LESSOR, did execute a Coal, Lignite and Mineral Lease in favor of James F. Gray, covering 4851.37 acres of land, more or less, in Atascosa County, Texas, which lease has been recorded in Vol. 226, pp. 503-512 of the Deed Records of Atascosa County, Texas, to which reference is here made for all pertinent purposes; and,

WHEREAS, under date of August 5, 1966, GUINETTA A. PEELER, Individually and as Independent Executrix of the Estate of A.M. Peeler, Deceased, and ALONZO M. PEELER, JR. as LESSORS, did execute and deliver a Lease Amendment to the above mentioned lease unto James F. Gray, which Lease Amendment, among other things, did increase the amount of leased acreage to 4915.70 acres, more or less, which Lease Amendment appears of record in Vol. 311, pp. 105-109 of the D/R of Atascosa County, Texas, to which reference is here made for all pertinent purposes; and,

WHEREAS, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, are now the successor in interest of the original LESSOR and are hereinafter called present LESSORS, and BRAZOS ELECTRIC POWER COOPERATIVE, INC. of Waco, Texas, and SOUTH TEXAS ELECTRIC COOPERATIVE, INC. of Victoria, Texas, are the successors in interest to James F. Gray as LESSEE under the above mentioned instruments, and are hereinafter called present LESSEES; and,

WHEREAS, it is the mutual desire and intent of the present LESSORS and present LESSEES in consideration of the sum of Ten and no/100 (\$10.00) Dollars, and other good and valuable consideration cash in hand paid by the present LESSEES to present LESSORS, the receipt of which is hereby acknowledged, and for the further consideration of the mutual benefits to each of the parties herein to amend the aforementioned Coal, Lignite and Mineral Lease, and Lease Amendment, and by these presents do hereby amend said Coal, Lignite and Mineral Lease and Lease Amendment in the following particulars only:

I.

The property description of the property to be covered and included under said Coal, Lignite and Mineral Lease is hereby amended so that in addition to the property description now appearing in said lease and in said Lease Amendment, the lease shall hereafter cover and include all of the property shown in Exhibit "A"

6352
6333

hereto attached and made a part hereof for all purposes, and LESSORS do hereby Lease, Let and Demise unto LESSEES all of said property in accordance with the terms and provisions of said original lease, the original Lease Amendment and in accordance with the present Lease Amendment No. 2.

As a further consideration of this agreement LESSEE agrees to pay an advance royalty of Ten Dollars (\$10.00) per acre on the additional acreage covered by this Lease Amendment No. 2 which payment shall be made to LESSOR or to LESSOR'S credit at the Jourdanton State Bank, Jourdanton, Texas, on or before January 20, 1976. Such advance royalty shall be recovered by LESSEE at the rate of twenty cents (20¢) for each gross ton of coal, lignite, clay and/or minerals associated therewith first mined from the property herein added to the lease by this Lease Amendment No. 2.

II.

Housing of employees shall not be permitted on the leased premises without the written consent of LESSORS.

III.

Paragraph III of the original Coal, Lignite and Mineral Lease is hereby amended so that all royalties provided for under said Paragraph III shall hereafter read "twenty (20¢) cents" instead of "five (5¢) cents" per gross ton, and a gross ton shall be computed at 2,000 pounds. LESSEE herein will consider all materials covered by this lease and mined by strip mining operations as belonging to the owner of the surface estate. It is further agreed that notwithstanding anything herein to the contrary, the per ton royalty payments herein provided for shall be adjusted on the following basis in accordance with the Monthly Index of Wholesale Prices, Basic Commodities, Thirteen Raw Industrials, as computed by the Bureau of Economic Analysis, U.S. Department of Commerce, and published by the U.S. Department of Commerce in its publication entitled "Survey of Current Business" (herein called the "Industrials Index" or "Industrials Indices").

The beginning month in which any mining operations are commenced on the leased premises shall be the beginning month, and the average of the preceding twelve monthly Industrial Indices ending with and including the beginning date shall be determined and hereinafter called "Base Index". Thereafter on each following twelve-month anniversary of the beginning month, the average of the

6352
6333

preceding twelve monthly Industrials Indices shall again be determined (herein called the "Contemporary Index") and the Contemporary Index will be compared with the Base Index.

It is agreed that no increase or decrease of royalty payments hereunder shall take place so long as the Contemporary Index does not exceed the Base Index by more than twenty per cent (20%) of the Base Index (herein called the "Neutral Zone"). However, for each percentage point that the Contemporary Index either exceeds or falls below the Neutral Zone, the royalty payments provided for hereunder shall be correspondingly increased or decreased, as the case may be, by the same percentage point. For example, if the Contemporary Index exceeds the Base Index by twenty-three per cent (23%), the royalties herein provided for shall be increased by three per cent (3%), or should the Contemporary Index be twenty-three per cent (23%) below the Base Index, the royalties herein provided for shall be reduced by three per cent (3%). Such increase or decrease, if any, shall apply to all royalty payments that may be due under the terms hereof for the twelve-month period next following the anniversary month from which the Contemporary Index was determined. It is agreed that all calculations shall be carried to only four places and rounded off to two places, for example, .2346 shall equal 23 per cent, and .2357 shall equal 24 per cent. In the event the U.S. Department of Commerce ceases the publication of the "Survey of Current Business", or ceases the publication of the Industrial Index, LESSEES and LESSORS must mutually select an equivalent index for the purposes of this paragraph and failing to mutually agree, the alternative selection shall be made by arbitration, and such alternative selection shall be conclusive. Notwithstanding anything to the contrary in this paragraph, the royalty to be paid the Lessor herein shall never be less than Twenty (20¢) cents per gross ton.

IV.

Paragraph IV of said original Coal, Lignite and Mineral Lease is hereby amended so that the royalty and rental payments of fifty cents (50¢) per acre as therein provided shall be and are hereby increased to the sum of Two Dollars (\$2.00) per acre, commencing with the next rental payment date under said original Lease, the same being on or before August 15, 1976; and Paragraph (4.) of the original Lease Amendment is hereby amended so that all such future payments shall

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be made to the credit of present LESSORS in the Jourdanton State Bank, Jourdanton, Texas, but subject to change in connection with the other terms and provisions of the original lease concerning the depository bank. For the purpose of determining the amount of rental or other payments hereunder, the leased premises shall now be considered to comprise 6062.94 acres of land, whether they actually contain more or less.

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6062 64

V.

The facilities to be placed upon the leased premises covered by this lease shall be confined to those necessary for exploring, prospecting, mining, removing, stockpiling, storing and marketing the minerals granted, and transporting the same from said leased premises. Lessee is hereby granted the right, without any further consideration or payment, to use the premises and any mine shafts, pits, haulage ways, and other improvements and facilities on, in or under the premises for or in connection with mining, removing, and transporting, of coal, lignite, clay and other minerals from other lands, and for the purpose of access to other lands. All facilities placed on the leased premises by Lessee shall be removed by the Lessee within ninety (90) days after the termination of this lease. Upon the failure to remove said facilities, they shall become the property of the owner of the surface estate.

421 256

Lessee shall locate any road on the leased premises at a location mutually agreeable to both Lessor and Lessee, consistent with Lessee's operations hereunder, and Lessor shall make no unreasonable objection or unreasonable demand concerning the location thereof. Any such road shall be maintained by the Lessee in such manner as to bear the traffic necessary to Lessee's operations. Upon the termination of this lease, all roads so constructed shall become the property of Lessor. Lessor shall have the right to use any such road, so long as the use thereof does not interfere with Lessee's use thereof.

421 282

Lessee shall have the use of water from the premises only with the written consent of the Lessor and in no event shall Lessee use water from the Lessor's wells, tanks, or surface reservoirs.

It is agreed and stipulated that no exploring or mining operations shall be conducted, nor any facilities necessary to the same constructed, within three hundred (300) feet of the dwelling house and appurtenant structures thereto presently located on the leased premises.

VI.

Paragraph VII of the Original Lease, and Paragraph (5.) of the Lease Amendment are hereby amended so that all of said paragraphs as originally written are hereby deleted, and in lieu thereof the following shall be applicable:

LESSEES agree, within six months after the abandonment of any excavated area located on the leased premises that it will commence operations to level and restore the surface thereof to that extent which is feasible and reasonably practicable, and will diligently prosecute such operations to completion without undue delay. In this connection, LESSEES agree to save any topsoil removed in the conduct of mining operations on the lands covered hereby, progressively with the excavations required for such operations, and at the time of restoring the surface after abandonment of such excavated area then to replace on the surface such saved topsoil. Furthermore, any materials returned from the plant site for burial in the excavated areas must be covered by at least ten feet (10 ft.) of subsoil immediately below the topsoil being replaced, in order to prevent any leaching of obnoxious acids or chemicals that might destroy the root system of any subsequent vegetation on the topsoil.

LESSEES further agree to plant and/or sprig and establish a perennial grass selected by LESSORS, but of a variety adapted to this area, on the reclaimed surface. LESSEES shall not be entitled to harvest or cut any of the grass, except as may be necessary for experimental purposes.

In consideration of and in full settlement for the loss of use of the leased premises that are affected by excavation or mining operations, LESSEES shall pay to the surface owner thereof the sum of Two hundred (\$200.00) Dollars per acre within thirty (30) days after such lands have been taken from the control of LESSORS and they are denied the use of the surface thereof, and in the event that such loss of use should continue for more than four (4) years past the date on which this first payment is due for the loss of the use of the land, the LESSEES shall pay to the surface owner the sum of an additional Fifty (\$50.00) Dollars per acre per year, which payment shall continue thereafter on each anniversary date of the date of the first payment due hereunder, until such time as LESSEES have restored the surface of the land to its original state and condition, and the use of the surface thereof restored to the LESSORS. Provided, however, that the maximum amount which LESSEES are hereby obligated to pay the surface owner

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for such surface damages shall be the sum of \$500.00 per acre, or the reasonable market value of said land, whichever is higher, but in no event shall this maximum provision be applicable until after the LESSEES have made every reasonable effort to restore the surface of the land to its original state and condition as is contemplated in the preceding portion of this paragraph. In the event of a disagreement as to whether or not such damaged lands have been restored to their original condition, it is agreed by and between LESSORS and LESSEES herein that the issue shall be determined by an Arbitration Committee which shall consist of one person named by LESSOR, one person named by LESSEE, and a third person named by the two parties first named, and any such determination made by the Arbitration Committee shall be final.

In the event that LESSEES in their operations hereunder find it necessary to destroy any source of water on the leased premises, or finds it necessary to prohibit the LESSORS from using such source of water, or makes it untenable for him to do so, it will (a) provide a comparable source of water at some other location on the land of LESSORS at the point designated by LESSORS; or (b) if a comparable source of water can not be furnished to the LESSORS to LESSORS satisfaction, then LESSEES must replace such earthen reservoir or water well at the approximate same location where the same was destroyed upon completion of its mining operations hereunder. In the event that a comparable source of water can not be provided to the LESSORS as herein provided, and LESSORS must await the completion of mining operations before a restoration of his original water source can be provided, then LESSEES herein must provide a temporary source of water supply adequate to the needs of livestock in the pasture wherein said water source was destroyed.

LESSEES further agree to erect and maintain a good and substantial fence capable of turning livestock of ordinary demeanor around the area of its mining operations so as to prohibit injury to the livestock of LESSORS.

It is further understood that LESSEES shall pay to the surface owner the sum of \$10.00 per acre per year as rental on all surface lands (except that actually mined) which are used by LESSEES for the purpose of erecting structures, storing materials or any other use which would deprive the surface owner of the use of said lands.

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After the termination of this lease, LESSEES are hereby granted and shall have the continued use of the leased premises which are necessary for roadways, railroad rights of way or other easements and rights of ingress, egress and regress elsewhere granted herein that may reasonably be required for the mining operations and the removal of coal, lignite, clay and minerals associated therewith from other lands that may be contiguous to or in the general area of the premises covered hereby, upon the payment of \$10.00 per acre, per year for such lands used for ingress and egress to other premises.

At the conclusion of the use of LESSORS lands as is provided for under the preceding two sub-paragraphs, LESSEES shall restore the surface thereof to as near its original state and condition as is possible.

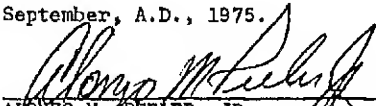
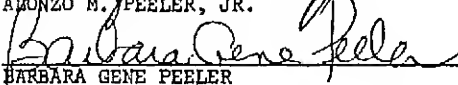
VII.

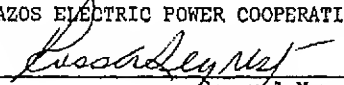
LESSEES herein, their agents, employees and contractors and sub-contractors shall not be permitted to carry firearms on to the leased premises, or on to any of the other lands of LESSORS, nor shall they be permitted to hunt or fish thereon, and anyone caught in violation of this provision shall be deemed a trespasser and subject to the laws of the State of Texas against trespassing, and shall not again be permitted to enter upon the leased premises or the lands of LESSORS. This prohibition shall not affect any authorized security personnel of LESSEES when on actual duty and acting in an authorized capacity as a security officer.

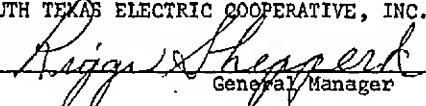
VIII.

All other terms and provisions of the original lease are hereby ratified and confirmed.

EXECUTED this the 23RD day of September, A.D., 1975.


ARONZO M. PEELER, JR.

BARBARA GENE PEELER
LESSORS

BRAZOS ELECTRIC POWER COOPERATIVE, INC.
By 
General Manager

SOUTH TEXAS ELECTRIC COOPERATIVE, INC.
By 
General Manager

421 259

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THE STATE OF TEXAS :
COUNTY OF ATASCOSA :

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BEFORE ME, the undersigned authority, on this day personally appeared ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this 23rd day of September,



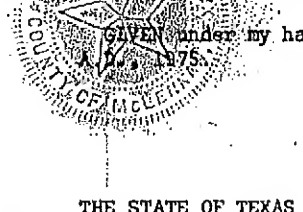
Orilla H. Jansch
NOTARY PUBLIC, ATASCOSA COUNTY, TEXAS

THE STATE OF TEXAS :
COUNTY OF McLennan

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BEFORE ME, the undersigned authority, on this day personally appeared Russ A. Sargent, General Manager for BRAZOS ELECTRIC POWER COOPERATIVE, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN under my hand and seal of office, this 26th day of September,



Lois Ruff
NOTARY PUBLIC, McLennan CO., TEXAS

THE STATE OF TEXAS :
COUNTY OF VICTORIA

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BEFORE ME, the undersigned authority, on this day personally appeared Riggs Shepperd, General Manager for SOUTH TEXAS ELECTRIC COOPERATIVE, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN under my hand and seal of office, this 23rd day of September,



Lester E. Foster
NOTARY PUBLIC, VICTORIA CO., TEXAS

EXHIBIT "A"

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All of the following described real property lying and being situated in the Dr. Chas. F. Simmons 95,000 acre Subdivision in Atascosa County, Texas, as per map or plat of said subdivision of record in Vol. 37 of the Deed Records of Atascosa County, Texas, and being that portion of said tracts owned by Lessors herein, to-wit:

<u>S. S. TRACT</u>	<u>ACREAGE</u>	<u>S. S. TRACT</u>	<u>ACREAGE</u>
2919	10.00	3883	10.00
2920	10.00	3884	10.00
2921	10.00	3913	10.00
2922	10.00	3926	10.00
2924	10.00	3927	10.00
2925	10.00	3928	10.00
2927	10.00	3929	10.00
2928	10.00	3938	10.00
2929	10.00	3941	10.00
2930	10.00	3942	10.00
2938	10.00	3943	10.00
2946	10.00	3944	10.00
2947	10.00	3945	10.00
2948	10.00	3949	10.00
2949	10.00	3955	10.00
2983	10.00	4423	10.00
2986	10.00	4428	3.45
2996½	1.30	4429	1.37
3444	10.00	4439	10.00
3445	10.00	4440	10.00
3446	10.00	4452	10.00
3447	10.00	4795	10.00
3448	10.00	4811	10.00
3449	10.00	4821	10.00
3450	10.00	4822	10.00
3453	10.00	4825	10.00
3454	10.00	4831	10.00
3455	10.00	4832	10.00
3456	10.00	4833	10.00
3457	10.00	4834	10.00
3458	10.00	4835	10.00
3459	10.00	4836	10.00
3460	10.00	4845	5.20
3461	10.00	4865	.80
3462	10.00	4866	2.00
3463	10.00	4867	3.20
3484	10.00	4868	4.50
3487	10.00	4869	6.10
3497	10.00	4871	8.60
3510	10.00	4872	9.90
3856	10.00	4873	10.00
3857	10.00	4901	20.00
3870	10.00	4902	20.00
3871	10.00	4907	20.00
3880	10.00	4919	20.00
3881	10.00	4924	20.00
3882	10.00	4930½	16.10
		6554	160.00
		6558	1.99

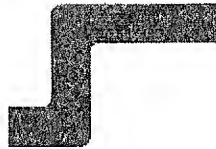
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Also, the following acreage owned by Lessors out of the hereinafter described Survey in Atascosa County, Texas, to-wit:

16.10 acres out of the A. Hicks Survey #32
 20.00 acres out of the Com. C. R. IRR Co. Survey #20
 66.00 acres out of the I&GN RR Co. Survey #1721

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SAN MIGUEL ELECTRIC COOPERATIVE, INC.

P. O. Box 280, Jourdanton, Texas 78026

ERNEST I. WOHLSCHEGEL

General Manager

March 19, 1981

Mr. and Mrs. Alonzo M. Peeler, Jr.
P. O. Box 423
Jourdanton, Texas 78026

Re: San Miguel Electric Cooperative, Inc./
Alonzo M. Peeler, Jr., et ux - Lignite Lease

Dear Mr. and Mrs. Peeler:

During the negotiations which culminated in Lease Amendment No. 6 we had several discussions with you concerning our mutual goal of returning the surface of the mine area to you as soon as revegetation had reached a stage that grazing of your cattle would be permitted. Both the Cooperative and you recognize that there are many governmental regulations which must be complied with during reclamation which may preclude a prompt return of the surface to your control for ranching purposes.

This letter is written to document our previous discussions and further to express the future cooperation between the Cooperative and you relative to an approved revegetation of the reclaimed land.

The Cooperative intends to utilize accepted grass management techniques including controlled grazing, shredding, baling or other procedures outlined in U.S.D.A. Soil Conservation Service Guidelines. In turn you as Lessor have expressed an intent and future agreement to accept the return of control of the surface as soon as the governmental entities approve such return to your control. It is recognized that control may be returned to you for grazing purposes even though it is during the minimum five-year period after the last seeding or sprigging date during which the Cooperative has the responsibility for successful revegetation of the reclaimed mine land. In such case you have agreed with the Cooperative not to require additional surface damage payments during the Cooperative's liability period

Mr. and Mrs. Alonzo M. Peeler, Jr.
March 19, 1981

Page Two

if the land is available for your use for grazing prior to the restoration period described in Lease Amendment No. 2 or paragraphs 1(a) and 1(b) of Lease Amendment No. 6.

The Cooperative appreciates your cooperation in our mutual goal to restore the mined land to permit the return to you for ranching purposes as soon as possible.

Assuming this letter accurately sets forth the understandings and agreements between the Cooperative and you, we would appreciate your dating and executing a copy of it and returning it to the undersigned.

Should you have any questions about this letter, please advise.

Sincerely yours,

L. E. Gross, Jr.
General Manager

ACCEPTED AND AGREED
this _____ day of
_____, 1981.

ALONZO M. PEELER, JR.

BARBARA GENE PEELER

Alonzo M. Peeler, Jr., et ux to San Miguel Electric Cooperative, Inc.

LEASE AMENDMENT NO. 6

THE STATE OF TEXAS X

COUNTY OF ATASCOSA X

WHEREAS, under date of August 15, 1953, A.M. Peeler, as Lessor, did execute a Coal, Lignite and Mineral Lease in favor of James F. Gray covering 4851.37 acres of land, more or less, in Atascosa County, Texas, which lease appears of record in Volume 226, Page 503 of the D/R of Atascosa County, Texas, to which reference is here made for all pertinent purposes; and

WHEREAS, Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler, are the successors in interest of the original Lessor; and,

WHEREAS, San Miguel Electric Cooperative, Inc. of Jourdanton, Texas is the successor in interest of the original Lessee; and,

WHEREAS, said original Lease has been modified and amended by five separate lease amendments heretofore executed by the necessary parties; and,

WHEREAS, it is now the desire and intent of the said Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler, as Lessors, and, San Miguel Electric Cooperative, Inc. of Jourdanton, Texas, as Lessee to further amend the aforementioned Lease and subsequent amendments thereto in the following particulars only:

1. In order to clarify paragraph VI of Lease Amendment No. 2 heretofore dated the 23rd day of September, 1975, the parties hereto agree for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Lessor that the provisions of said paragraph VI dealing with the payment by Lessee to Lessor for the loss of use of the leased premises that are affected by excavation or mining operations and the provisions of said paragraph VI relative to rental of all surface land (except that actually mined) which are used by Lessee for the purpose of erecting structures, storing materials or any other use which would deprive the surface owner of the use of said land, be clarified as follows:

BOOK 566 PAGE 332

BOOK 566 PAGE 333

- a. Water Control Facilities. Water Control Facilities such as diversion ditches, dikes, and retention or sedimentation ponds will be required in order to meet State and Federal Regulations. Lessee shall pay to Lessor, \$200.00 per acre for that portion of the affected area where topsoil or more substrata is removed. Payment shall be made within thirty (30) days after such lands have been taken from the control of Lessors and they are denied the use of the surface thereof.
- Incidental to the construction and maintenance activities of the areas where topsoil is removed, will be adjacent side areas where the natural vegetation is removed but no topsoil is removed. Lessee agrees to pay Lessor \$10.00 per acre per year for the use of such side areas. Payment will continue until such time that vegetation is re-established and may again be utilized by Lessor. Water Control Facilities will be required for periods which will exceed the four (4) year restoration period referred to in Article VI of Amendment No. 2. Lessor hereby waives the four (4) year restoration period on these facilities, and allows the use of these facilities by Lessee with no additional compensation until mining and reclamation activities are complete on Lessor's property or until the facility is no longer required by Lessee, whichever occurs first, referred to herein as the "end date". Lessee shall provide Lessor notice in writing, when the subject facility is no longer required. Lessee is hereby granted a two (2) year restoration period beyond the "end date" in which to reclaim the facility in accordance with reclamation provisions set out in Lease Amendment No. 2. In the event that any of these facilities are eventually mined, then the four (4) year restoration provision of Lease Amendment No. 2 will prevail and will begin at the time the area is actually mined.
- b. Emergency Waste Disposal Pit. An emergency Waste Disposal Pit will be required in order to dispose of waste products generated by the San Miguel Plant, including bottom ash, fly ash and scrubber sludge. The disposal pit will be located out of the lignite mine area, but on acreage leased under previous Lease Agreements or Amendments.

Lessee shall pay to Lessor, \$200.00 per acre for that portion of the affected area where topsoil or more substrata is removed. Payment shall be made within thirty (30) days after such lands have been taken from the control of Lessors and they are denied the use of the surface thereof.

The Waste Disposal Pit will be required for a period which will exceed the four (4) year restoration period referred to in Article VI of Amendment No. 2. Lessor hereby waives the four (4) year restoration period on this pit, and allows the use of the pit by Lessee with no additional compensation until mining and reclamation activities are complete on Lessors property or until the pit is no longer required by Lessee, whichever occurs first, referred to herein as the "end date". Lessee shall provide Lessor notice in writing when the subject facility is no longer required. Lessee is hereby granted a two (2) year restoration period beyond the "end date" in which to reclaim the pit in accordance with reclamation provisions set out in Lease Amendment No. 2.

c. Temporary Roads. Lessee shall pay to Lessor \$10.00 per acre per year for the use of land utilized for temporary roads. These roads shall be reclaimed in accordance with reclamation provisions set out in Lease Amendment No. 2.

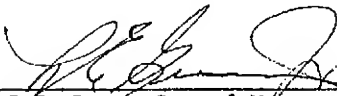
2. In order to facilitate the accounting of Lessee, the parties hereto agree to prorate on a monthly basis the \$10.00 per acre annual lease payment due Lessor when areas are fenced or the natural vegetation is removed by Lessee, whichever event first occurs.

3. All other terms and provisions of the original lease and of all subsequent lease amendments thereto are hereby ratified and confirmed.

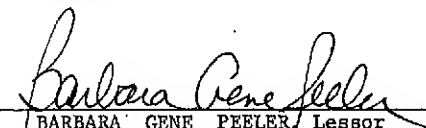
EXECUTED this 10th day of July, 1981.

SAN MIGUEL ELECTRIC COOPERATIVE, INC.

BY:


L.E. Gross, General Manager

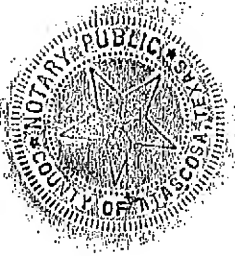

ALONZO M. PEELER, JR., Lessor


BARBARA GENE PEELER, Lessor

THE STATE OF TEXAS X
COUNTY OF ATASCOSA X

BEFORE ME, the undersigned authority, on this day personally appeared ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of July, 1981.



Deana C. Steiner
Notary Public in and for Atascosa
County, Texas

My commission expires: 3-31-85

BOOK 566 PAGE 336

THE STATE OF TEXAS
COUNTY OF

BEFORE ME, the undersigned authority, on this day personally appeared L.E. Gross, Jr., General Manager of San Miguel Electric Cooperative, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of July, 1981.



Deana C. Steiner
Notary Public in and for Atascosa
County, Texas

My commission expires: 1-12-85

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310.1522

Easement- Alonzo M. Peeler, Jr., et ux To San Miguel Electric Cooperative, Inc.

THE STATE OF TEXAS §
 §
COUNTY OF ATASCOSA §

KNOW ALL MEN BY THESE PRESENTS:

That we, Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler of Atascosa County, Texas, hereinafter called "Grantor", whether one or more, for and in consideration of Ten and No/100 Dollars and other good and valuable consideration to Grantor in hand paid by San Miguel Electric Cooperative, Inc., of Jourdanton, Texas, hereinafter called "Grantee" the receipt and sufficiency of which is hereby acknowledged, has GRANTED, SOLD AND CONVEYED and by these presents does GRANT, SELL AND CONVEY unto said Grantee, and to its successors or assigns, an Easement and Right of Way for one or more electric power lines and communication lines for use of Grantee each consisting of a variable number of wires and all necessary and desirable appurtenances and attachments including poles, H-frames, metal towers, guy wires and guy anchorages, over, across and upon all that certain land in Atascosa County, Texas, more particularly described in Exhibit "A" attached hereto.

BOOK 515 PAGE 287

Said Easement and Right of Way shall include the right of ingress and egress over, across and upon said land for the purpose of constructing, operating, improving, reconstructing, increasing or reducing the capability, repairing, relocating, inspecting, patrolling, maintaining and removing such electric power and communication lines for use of Grantee as the Grantee may from time to time find necessary, convenient or desirable to erect thereon, the right to trim and cut down trees and shrubbery to the extent in the sole judgment of Grantee is necessary to prevent possible interference with the operation of any of said lines or to remove possible hazards thereto and the right to remove or prevent the construction on said land of any or all buildings, structures and obstructions. If any such buildings, structures or obstructions are constructed or permitted by Grantor to exist on said land without prior written consent of Grantee,

then the Grantee shall have the right to remove same from such land and Grantor agrees to pay to Grantee the reasonable cost of such removal, and this agreement together with the other provisions of this grant shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

~~The right hereby granted is severable and may be assigned either~~
in whole or in part.

Grantor reserves the right to use said land for general agricultural and grazing purposes, provided such use shall not include the growing of trees thereon or any other use that might in the sole judgment of Grantee interfere with the exercise by the Grantee of the rights hereby granted. Grantor further reserves the right to lay out, dedicate, construct, maintain and use across said land such roads, streets, alleys, railroad tracks, underground telephone cables and conduits and gas, water and sewer pipe lines as will not interfere with Grantee's use of said land for the purposes aforesaid, provided that all such facilities shall be located not less than twenty-five (25') feet from the center line of the above described easement, or if crossing the Right of Way, not less than twenty-five feet (25') from the base of any tower or pole and shall be so constructed as to provide with respect to Grantee's wires and other facilities the minimum clearances provided by law and recognized as standard in the electrical industry. Grantor also reserves the right to erect fences not more than 8 feet high across and upon said land, provided all such fences shall have gates, openings or removable sections at least 10 feet wide which will permit Grantee reasonable access to all parts of said land.

In addition to the consideration above recited for the easement and right of way hereby granted, the Grantee will pay to the owner of the land and if leased to his tenant as he may be respectively entitled, for actual damages as done to fences and growing crops by reason of the construction, maintenance or removal of said lines; provided however, that no such payment

BOOK 515 PAGE 285

will be made for trimming or removal of trees hereafter permitted to grow on said land, nor for removal of buildings, structures or obstructions erected upon said land after any of said lines are constructed.

It is agreed and understood that Grantee shall pay all taxes, including ad valorem taxes on such Tract during the period of this easement herein granted.

Grantor warrants that Grantor is the owner of the above described property and has the right to execute this instrument. Grantor warrants that there are no liens or encumbrances existing against said property except as follows:

Refer to Exhibit "B" attached hereto.

This easement and right of way shall terminate when all of said lines shall be abandoned by Grantee, its successors and assigns and in that event, said easement and right of way shall cease and all rights herein granted shall terminate and revert to Grantor, their heirs and assigns.

Grantee herein, its agents, employees, contractors and sub-contractors shall not be permitted to carry firearms on the subject premises, nor shall they be permitted to hunt or fish thereon, and anyone caught in violation of this provision shall be deemed as a trespasser and subject to the laws of the State of Texas against trespassing, and shall not again be permitted to enter upon the subject premises or any other property of Grantor. This prohibition shall not affect any authorized security personnel of Grantee when on actual duty and acting in an authorized capacity as a security officer.

BOOK 515 PAGE 289

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successors and assigns, and we do hereby bind ourselves, our heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the said premises and rights unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject, however, to the terms and provisions herein set forth.

EXECUTED this the 9th day of November, 1979.

Alonzo M. Peeler, Jr.
ALONZO M. PEELER, JR.

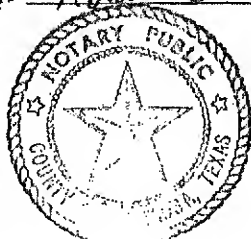
Barbara Gene Peeler
BARBARA GENE PEELER

BOOK 515 PAGE 290

THE STATE OF TEXAS §
 §
COUNTY OF ATASCOSA §

BEFORE ME, the undersigned authority, on this day personally appeared Alonzo M. Peeler, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this 9th day of November, 1979.



Pat Rosenbaum
Notary Public in and for
Atascosa County, Texas

My commission expires: Oct 18, 1981

BOOK 515 PAGE 291

THE STATE OF TEXAS §
 §
COUNTY OF ATASCOSA §

BEFORE ME, the undersigned authority, on this day personally appeared Barbara Gene Peeler known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this 9th day of November, 1979.



Deana C. Steile
Notary Public in and for
Atascosa County, Texas

My commission expires: 3-31-81

EXHIBIT "A"

SAN MIGUEL MINE 69 KV RIGHT-OF-WAY DESCRIPTION

Description for a 50 foot wide strip of land across farm tracts Numbers 4406, 4405, 4419, 4418, 4417, 4416, 4415, and 4414, of the Dr. Chas. F. Simmons Subdivision recorded in Vol. 37 of the deed records of Atascosa County, Texas, the centerline of this 50-foot-wide strip of land being more particularly described as follows:

Beginning at a point in the South line of Tract No. 4406 of the Dr. Chas. F. Simmons Subdivision recorded in Vol. 37, deed records of Atascosa County, Texas, said point being 173.23 feet West of the South-east corner of said tract 4406 for the center of a 50 foot wide strip of land, the limits of said 50 foot wide strip of land beginning on the South line of said Tract 4406 at a point 25 feet from said centerline if extended:

Thence North 20° 29' East along the center of said 50 foot wide strip of land across Farm Tracts 4406 and 4405, a distance of 495.01 feet to a point in the East line of said Tract No. 4405, the limits of said 50 foot wide strip terminating on said East line of Tract 4405 for the end of this part of said strip of land:

Thence North 20° 29' East a distance of 561.79 feet to a point in the South line of farm tract No. 4419, said point being 196.59 feet East of the Southwest corner of said Tract No. 4419 for the beginning of the centerline of a 50 foot wide strip of land, the limits of said 50 foot wide strip of land beginning on said South line of Tract 4419;

Thence North 20° 29' East along the centerline of said 50 foot wide strip of land across Farm Tracts Numbers 4419, 4418, 4417, 4416, 4415, and 4414, a distance of 1799.32 feet to a point in said Tract 4414, being a point for an angle to the right:

Thence North 58° 31' 30" East along the center of said 50 foot wide strip of land across said tract No. 4414, a distance of 586 feet to a point in the Southwesterly right-of-way line of a mine haul road for the end of this 50 foot wide strip of land, the limits of said strip terminating on said haul road right-of-way:


Also, for additional guying area use, beginning at said angle point in Tract No. 4414; Thence North 50° 30' West along the center of a 20 foot wide strip of land, a distance of 85 feet to the end of this strip of which approximately 26 feet of this strip is already included in said 50 wide strip of land.

Containing a total of 3.333 acres.

Certified Correct;

M. J. Stalcup

Registered Public Surveyor
October 17, 1979



HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK TEXAS

Certified Correct: *[Signature]*
M. J. STALCUP
Registered Public Surveyor
Oct. 17, 1979

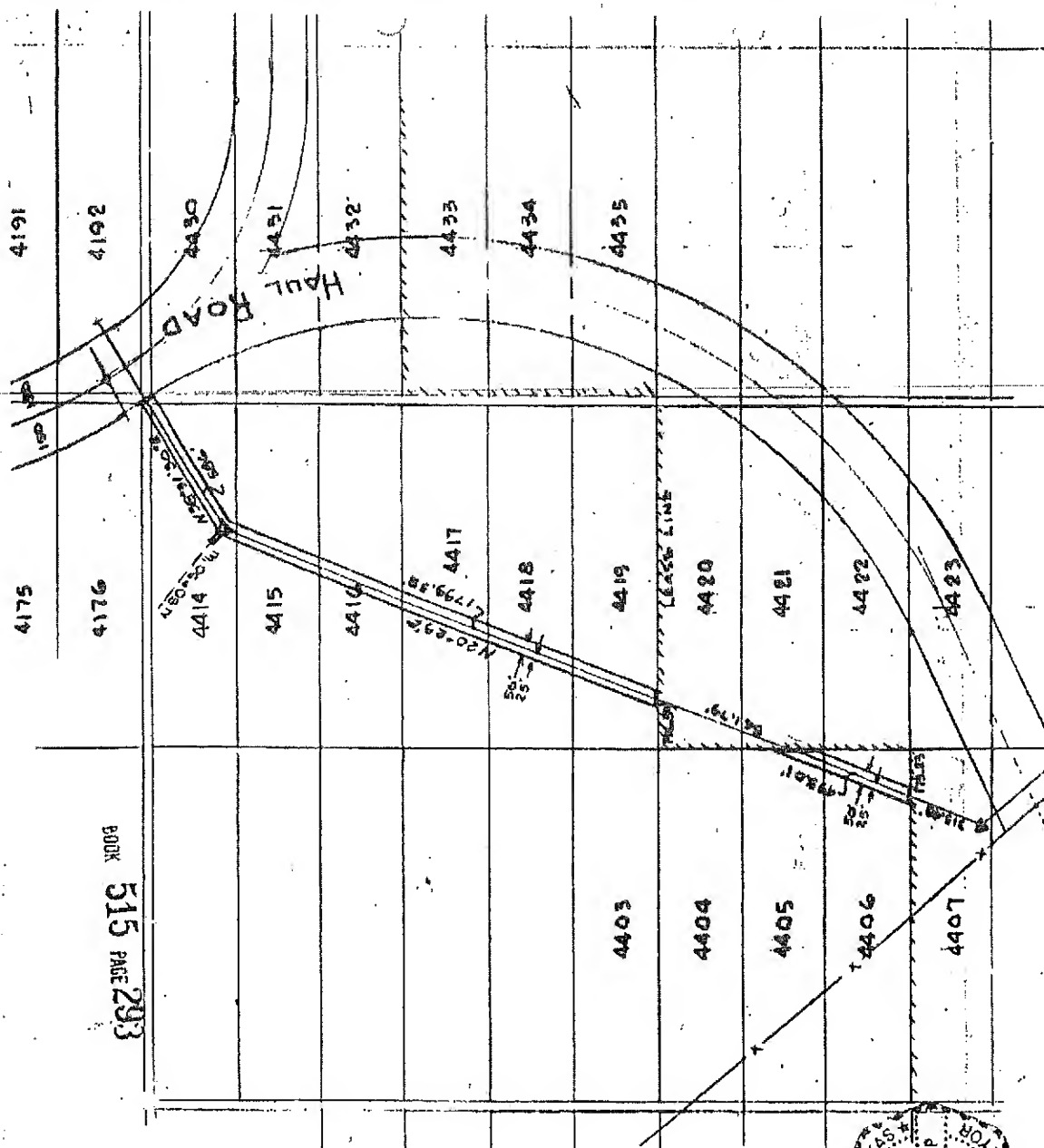


EXHIBIT "B"

SAN MIGUEL MINE 69KV RIGHT-OF-WAY
EASEMENT

Grantor warrants that there are no liens or encumbrances existing against property described in EXHIBIT "A" except as follows:

SS FARM
TRACT

DESCRIPTION OF LIEN OR ENCUMBRANCE

4406

A.M. Peeler, Jr., et ux to M.O. Turner
Oil Lease dated 4-5-78 appearing of record in Vol. 480, page 286 of the D/R of Atascosa County, Texas.

4405

A.M. Peeler, Jr., et ux to M.O. Turner
Oil Lease dated 4-5-78 appearing of record in Vol. 480, page 286 of the D/R of Atascosa County, Texas.

J

WARRANTY DEED AND EASEMENT: Alonzo M. Peeler, Jr., Et Ux
to San Miguel Electric Cooperative, Inc.

310.1505
mod

WARRANTY DEED AND EASEMENT FOR WATER WELL SITES

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF ATASCOSA §

That we, ALONZO M. PEELER, JR., and wife, BARBARA GENE
PEELER, of the County of Atascosa and State of Texas, for and
in consideration of the sum of Ten and No/100 Dollars (\$10.00),
the reconveyance of five (5) one-acre each water well sites, and
other good and valuable consideration to us in hand paid by SAN
MIGUEL ELECTRIC COOPERATIVE, INC. of Jourdanton, Texas, the receipt
and sufficiency of which is hereby acknowledged, have GRANTED,
SOLD AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY
(subject to the terms, provisions, reservations and options hereinafter
set forth) unto the said SAN MIGUEL ELECTRIC COOPERATIVE, INC.
of Jourdanton, Texas the following described real property, lying
and being situated in Atascosa County, Texas, to-wit:

FIRST TRACT: One (1) acre of land out of the S. S. Farm
Tracts Number Four thousand, eight hundred thirty-two (4832) and
Four thousand, eight hundred thirty-three (4833), of the Dr. Chas.
F. Simmons 95,000 acre subdivision in Atascosa County, Texas, which
1 acre is described by metes and bounds as follows:

BEGINNING at a point 82.24 feet West and 159.25 feet
North of the Southeast corner of Tract 4833;

THENCE North 21° 31' East along the Northwesterly right-
of-way line of Haul Road at 183.54 feet pass the North line of
Tract 4833 and the South line of Tract 4832, continuing for a
total distance of 208.71 feet;

THENCE North 68° 29' West, 208.71 feet;

THENCE South 21° 31' West at 107.46 feet pass the South
line of Tract 4832 North line of Tract 4833, continuing for a total
distance of 208.71 feet;

THENCE South 68° 29' East, 208.71 feet to the Place of
Beginning, containing 1.0 acre.

SECOND TRACT: One (1) acre of land out of S. S. Farm Tracts
Number Three thousand, eight hundred fifty-five (3855) and Three
thousand, eight hundred fifty-six (3856), of the Dr. Chas. F. Simmons
Lands 95,000 acre subdivision in Atascosa County, Texas, which 1 acre
is described by metes and bounds as follows:

BOM 516 PAGE 334

BEGINNING at a point 408.56 feet West and 105.89 feet South of the Northeast corner of Tract 3856;
THENCE North 37° 19' West at 133.15 feet pass the North line of Tract 3856 and the South line of Tract 3855, continuing for a total distance of 208.71 feet;
THENCE South 52° 41' West at 99.13 feet pass the South line of Tract 3855 and the North line of Tract 3856, continuing for a total distance of 208.71 feet;
THENCE South 37° 19' East, 208.71 feet;
THENCE North 52° 41' East along the Northwestern right-of-way line of Haul Road 208.71 feet to the Place of Beginning, containing 1.0 acre.

THIRD TRACT: One (1) acre of land out of S. S. Farm Tract Number Three thousand, eight hundred ninety-six (3896) of the Dr. Chas. F. Simmons 95,000 acre subdivision in Atascosa County, Texas, which 1 acre is described by metes and bounds as follows:

BEGINNING at a point 264.11 feet East and 78.62 feet South of the Northwest corner of Tract 3896;
THENCE North 71° 03' East, 208.71 feet;
THENCE South 18° 57' East, 210.61 feet to the right-of-way of Haul Road;
THENCE Southwesterly around the arc of a curve to the left having radius of 3014.94 feet, an arc length of 208.75 feet and a chord of 208.71 feet South 71° 03' West;
THENCE North 18° 57' West, 210.61 feet to the Place of Beginning, containing 1.008 acres.

FOURTH TRACT: One (1) acre of land out of the S. S. Farm Tract Number Four thousand, one hundred ninety-one (4191) of the Dr. Chas. F. Simmons 95,000 acre subdivision in Atascosa County, Texas, which 1 acre is described by metes and bounds as follows:

BEGINNING at a point 671.14 feet West of the Southeast corner of Tract 4191;
THENCE West along the South line of Tract 4191, 208.71 feet;
THENCE North, 208.71 feet;
THENCE East, 208.71 feet;
THENCE South, 208.71 feet to the Place of Beginning, containing 1.0 acre.

FIFTH TRACT: One (1) acre of land out of the S. S. Farm Tracts Four thousand, four hundred and seven (4407) and Four thousand, four hundred twenty-three (4423) of the Dr. Chas. F. Simmons 95,000 acre subdivision in Atascosa County, Texas, which 1 acre is described by metes and bounds as follows:

BEGINNING at a point 152.12 feet West and 29.10 feet North of the Southeast corner of Tract 4407;
THENCE North 54° 30' East along the Northwestern right-of-way line of Haul Road at 168.54 feet pass the East line of Tract 4407 and the West line of Tract 4423, continuing for a total distance of 208.71 feet;
THENCE North 25° 30' West at 84.22 feet pass the West line of Tract 4423 and the East line of Tract 4407, continuing for a total distance of 208.71 feet;
THENCE South 54° 30' West, 208.71 feet;
THENCE South 25° 30' East, 208.71 feet to the Place of Beginning, containing 1.0 acre.

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516
PAGE 335

All of the above described acreage is out of the Dr. Chas. F. Simmons 95,000 acre subdivision in Atascosa County, Texas, as per map or plat of said Subdivision of record in Volume 37 of the Deed Records of Atascosa County, Texas, and plats of the conveyed acreage are attached hereto marked "Exhibit 1" through "Exhibit 5" inclusive.

SAVE AND EXCEPT, HOWEVER, and there is hereby expressly reserved and retained unto the Grantors herein, their heirs and assigns, all of the oil, gas and other minerals, whether similar or dissimilar, in on and under and that may be produced, mined, saved and sold from the above described real property, provided, however, that no rights of ingress or egress are reserved to the Grantors in connection with the ownership of this reserved mineral estate which would in any way interfere with the drilling, operating and maintenance of water wells on the conveyed acreage.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in any-wise belonging unto the said SAN MIGUEL ELECTRIC COOPERATIVE, INC., of Jourdanton, Texas, its successors and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators, to WARRANT AND FOREVER DEFEND, all and singular the said premises unto the said SAN MIGUEL ELECTRIC COOPERATIVE, INC., of Jourdanton, Texas, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Grantors herein do further warrant that they will not interfere with Grantee's right to take and use all of the underground or percolating water that may be produced from water wells intended to be drilled on the above conveyed acreage, excepting only that not more than one (1) water well may be drilled upon each one acre tract of land, but such water wells may be reworked or re-completed in different zones at the will of Grantee for the purpose of taking water therefrom.

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Furthermore, that the mineral reservation hereinabove set out is not a reservation of water or water rights other than the fact that Grantors herein do hereby expressly reserve and retain unto themselves, their heirs and assigns, the right to take and use water out of any or all of the water wells completed on the conveyed acreage for livestock or household purposes, but not otherwise.

For the same consideration hereinabove set forth, Grantors herein do hereby grant unto the Grantee herein an Easement to use land adjacent to the one acre well sites hereinabove conveyed as may be reasonably necessary and incidental to the drilling of water wells on the above conveyed acreage, provided only that Grantee herein clean up and repair any damage to any land covered by this Easement used for drilling hereunder, after the completion of such drilling operations.

In addition thereto, Grantors herein do grant unto the Grantee herein an Easement and Right of Way over and across other lands owned by Grantors herein adjacent to or in the vicinity of the water well sites for the purpose of ingress and egress to such well sites by vehicular traffic and for the purpose of locating, laying, operating, maintaining, replacing or removing any pipe lines and appurtenances thereto reasonably necessary to transport water from any of the well sites provided hereunder to Grantee's lignite-fired steam electric generating plant now under construction, or other facilities in connection therewith and for the purpose of constructing and maintaining electric distribution and transmission lines to serve the water well sites.

The Easement granted hereunder for additional land surrounding the well sites as being reasonably necessary in conducting Grantee drilling operations on the well sites, shall terminate at the time such drilling operations are completed, but the rights of ingress and egress across other lands owned by Grantor adjacent to or in the vicinity of the water well sites which is necessary for the

BOOK 516 PAGE 337

maintenance and operation of such water wells and pipe lines and electric transmission and distribution lines shall continue in effect until such time as the Grantee may abandon the use of any of such water wells and/or pipe lines.

And as an additional consideration for the execution of this Deed and Easement, Grantors herein do expressly reserve and retain unto themselves, their heirs and assigns, the preferential right and option to repurchase any of the one acre water well sites hereinabove conveyed to Grantee after the water wells that were completed thereon have been abandoned by Grantee. It is expressly agreed and stipulated, however, that Grantee shall be the sole and absolute judge of whether or not any of said water wells have been permanently abandoned, and after such decision has been made, the Grantee herein must notify Grantors herein in writing of such abandonment granting the Grantors herein the option of repurchasing said abandoned well site at the price of \$500.00 per acre, and which option of repurchase must be exercised by the Grantors within ninety (90) days after receipt of said written notice, and should Grantors herein, their heirs or assigns, fail to exercise this option within the prescribed time, this option shall thereafter cease. In the event that the Grantors herein do not survive to the abandonment date of any of the water wells, it shall be incumbent upon the heirs or assigns of Grantors herein to notify the Grantee herein that they have succeeded to the rights of Grantors under this reserved option.

If the Grantors herein, their heirs or assigns, do exercise their option of purchase of the abandoned drill sites under the foregoing paragraph, then the Grantee, or their successors in interest, shall have an additional period of ninety (90) days within which to remove any pumping equipment or storage tanks located on

any such abandoned well site, but any well casing must remain as a part of the realty.

Witness our hands this the 9th day of November,
A.D., 1979.

Alonzo M. Peeler, Jr.
ALONZO M. PEELER, JR.

Barbara Gene Peeler
BARBARA GENE PEELER

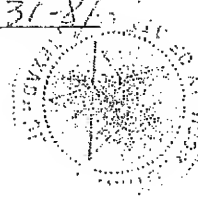
THE STATE OF TEXAS §
 §
COUNTY OF ATASCOSA §

BEFORE ME, the undersigned authority, on this day personally appeared ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 9th day of
November, A.D., 1979.

Deana C. Steele
Notary Public in and for
Atascosa County, Texas

My commission expires: 3-31-81

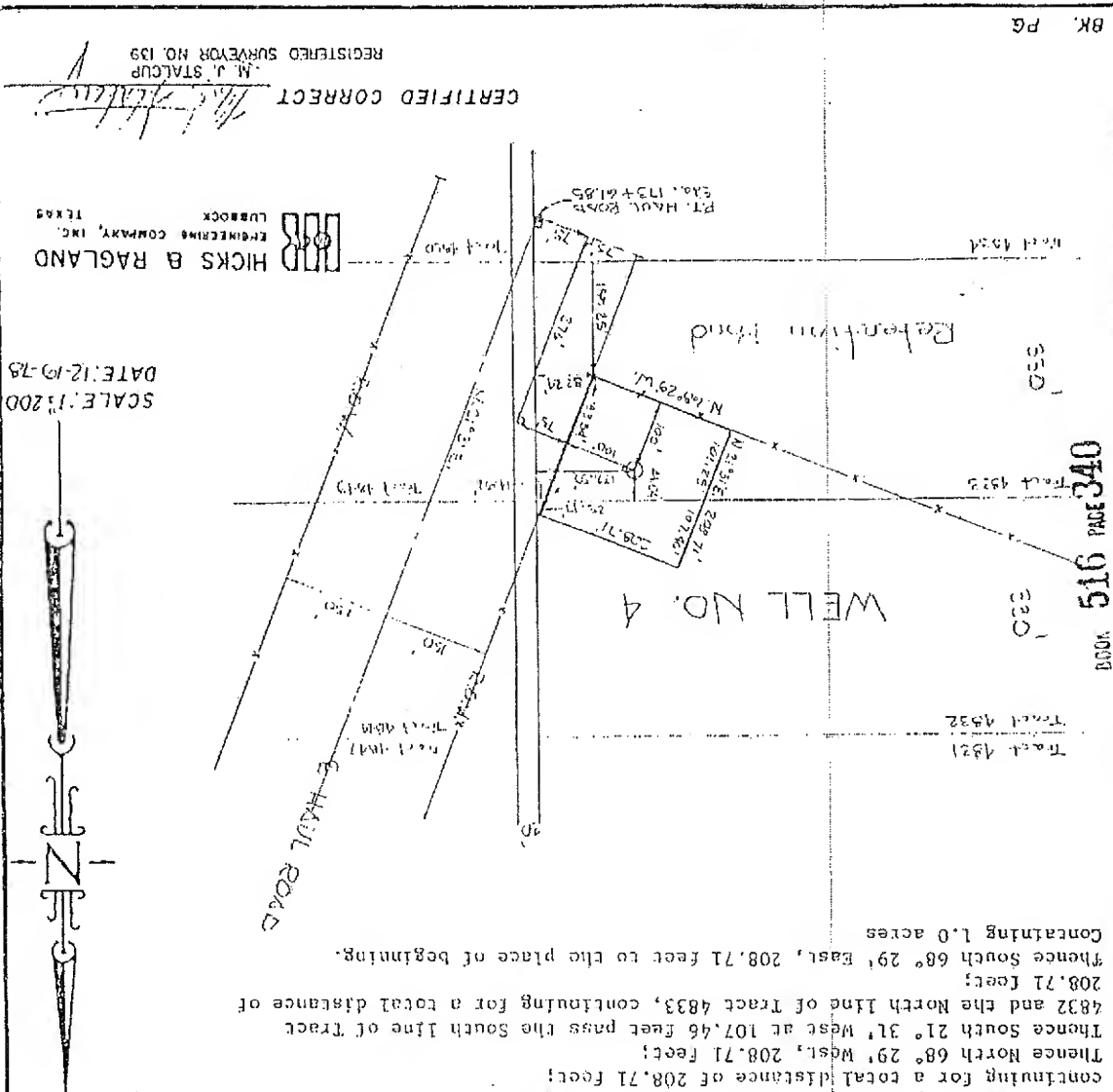


Please return to: Gardner S. Kendrick, Green & Kaufman, Inc.,
900 Alamo National Building, San Antonio,
Texas 78205.

PLAT OF PROPOSED WATER WELL LOCATION AND DESCRIPTION FOR ONE ACRE TRACT OUT OF FARM TRACTS 4832-4833, OF THE DR. CHAS. F. SIMMONS LANDS, SITUATED IN ATASCOSA COUNTY, TEXAS, RECORDED IN VOLUME NO. 37, OF THE DEED RECORD OF ATASCOSA COUNTY, TEXAS

ONE ACRE DESCRIPTION

Beginning at a point 82.25 feet West and 159.25 feet North of the Southeast corner of Tract 4833;
Thence North 21° 31' East along the Northwest-southwest right-of-way line of Haul Road at 183.54 feet pass the North line of Tract 4832 and the South line of Tract 4832; continuing for a total distance of 208.71 feet;
Thence North 68° 29' West, 208.71 feet;
Thence South 21° 31' West at 107.46 feet pass the South line of Tract of 4832 and the North line of Tract 4833, continuing for a total distance of 208.71 feet;
Thence South 68° 29' East, 208.71 feet to the place of beginning.
Containing 1.0 acres



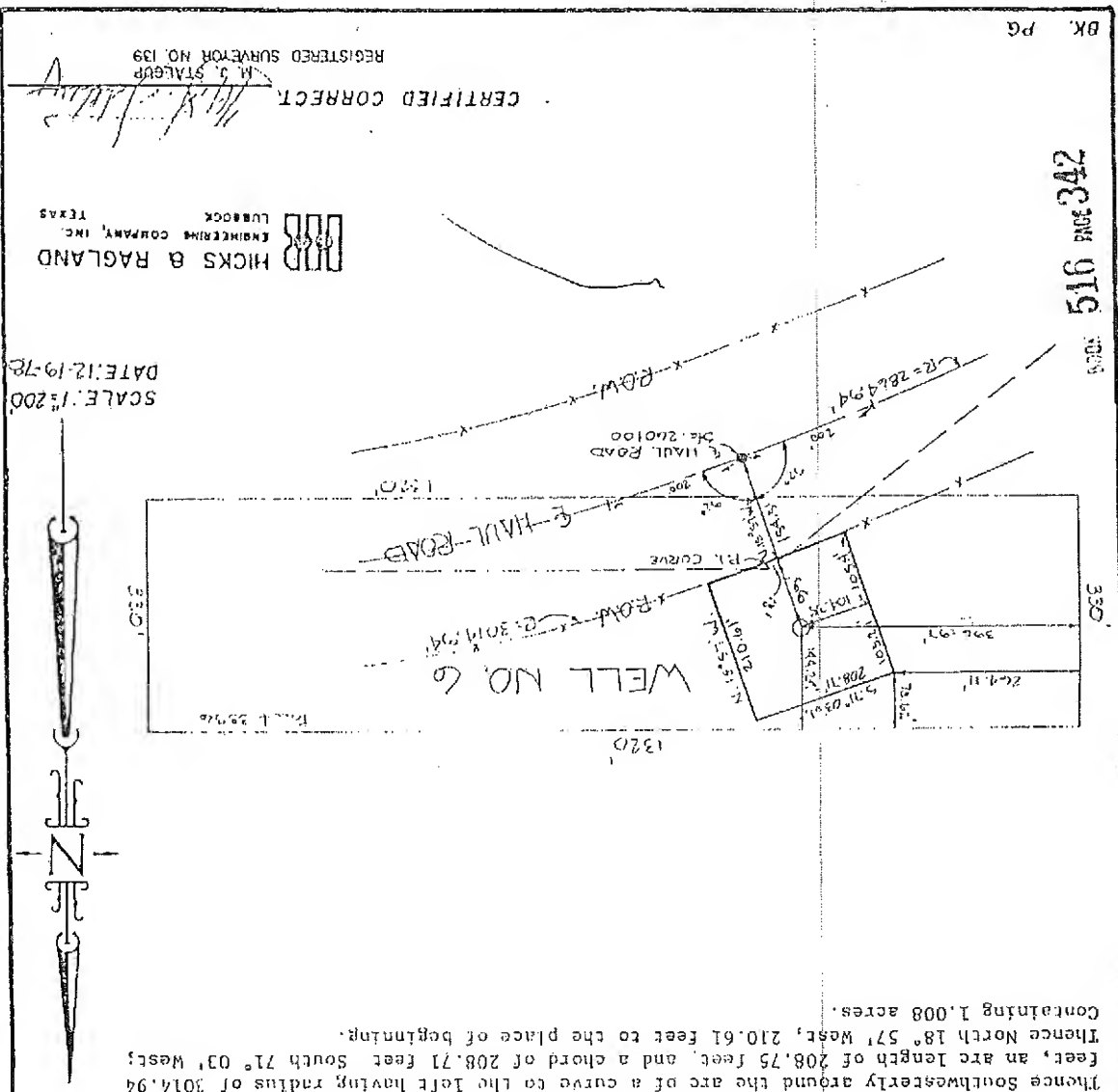
FIRST TRACT

EXHIBIT 1

PLAT OF PROPOSED
 WATER WELL LOCATION AND DESCRIPTION FOR ONE ACRE TRACT
 OUT OF FARM TRACT NO. 3896, OF THE DR. CHAS. F. SIMMONS LANDS,
 SITUATED IN ATASCOSA COUNTY, TEXAS, RECORDED IN VOLUME NO. 37,
 OF THE DEED RECORD OF ATASCOSA COUNTY, TEXAS

ONE ACRE DESCRIPTION

Beginning at a point 264.11 feet East and 78.62 feet South of the Northwest corner of
 Tract 3896;
 Thence North 71° 03' East, 208.71 feet;
 Thence South 18° 57' East, 210.61 feet to the right-of-way of Haul Road;
 Thence Southwesterly around the arc of a curve to the left having radius of 3014.94
 feet, an arc length of 208.75 feet, and a chord of 208.71 feet South 71° 03' West;
 Thence North 18° 57' West, 210.61 feet to the place of beginning.
 Containing 1.008 acres.



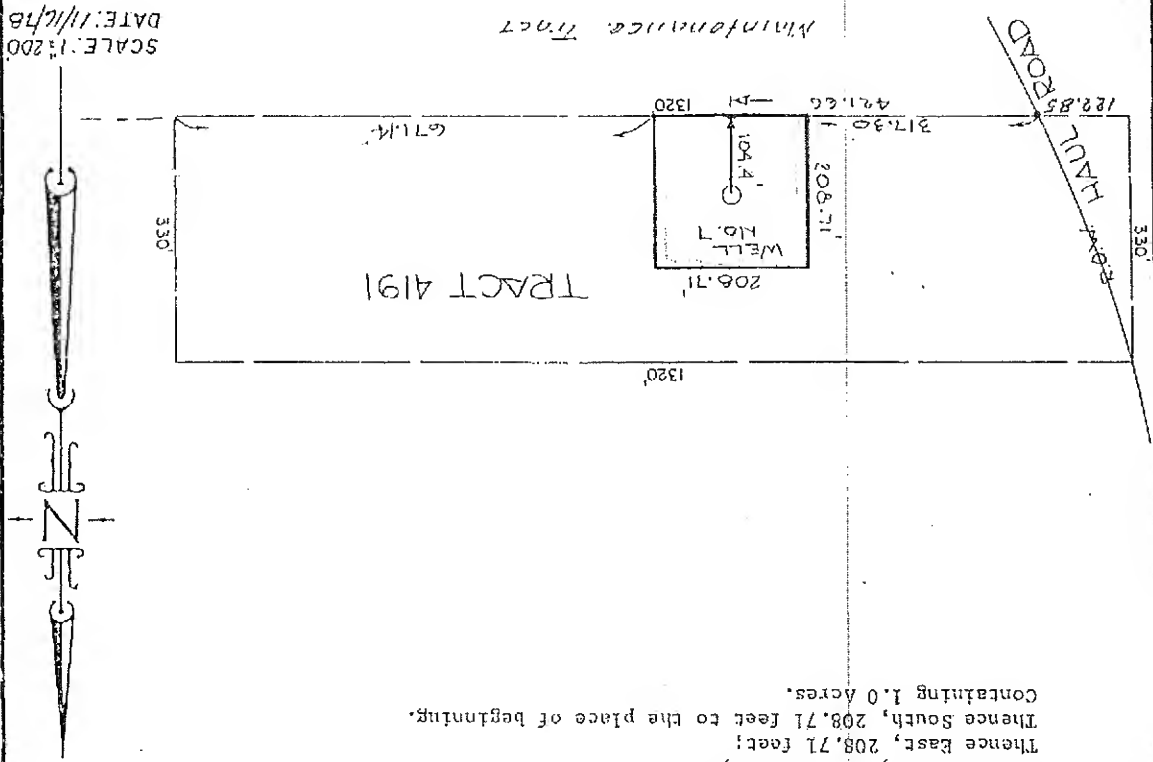
HICKS & RAGLAND
 ENGINEERING COMPANY, INC.
 LUBBOCK TEXAS

CERTIFIED CORRECT
 M. J. STALDER
 REGISTERED SURVEYOR NO. 139

PLAT OF PROPOSED -
WATER WELL LOCATION AND DESCRIPTION FOR ONE ACRE TRACT
OUT OF FARM TRACT NO. 4191, OF THE DR. CHAS. F. SIMMONS LANDS,
SITUATED IN ATASCOSA COUNTY, TEXAS, RECORDED IN VOLUME NO. 37,
OF THE DEED RECORD OF ATASCOSA COUNTY, TEXAS

ONE ACRE DESCRIPTION

Beginning at a point 671.14 feet West of the Southeast corner of Tract 4191;
Thence West along the South line of Tract 4191, 208.71 feet;
Thence North, 208.71 feet;
Thence East, 208.71 feet;
Thence South, 208.71 feet to the place of beginning.
Containing 1.0 Acres.

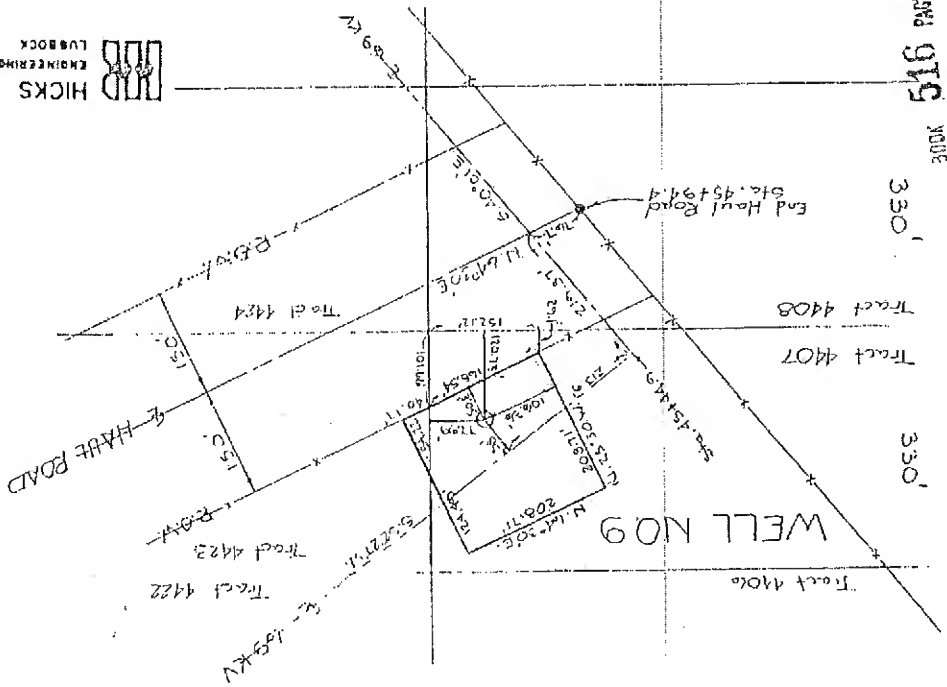


SCALE: 1"=200'
DATE: 11/14/78
HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK, TEXAS
CERTIFIED CORRECT
M. J. STALCUP
REGISTERED SURVEYOR NO. 139
BK. PG. 516 PAGE 343

PLAT OF PROPOSED
WATER WELL LOCATION AND DESCRIPTION FOR ONE ACRE TRACT
OUT OF FARM TRACTS 4407-4423, OF THE DR. CHAS. F. SIMMONS LANDS,
SITUATED IN ATASCOSA COUNTY, TEXAS, RECORDED IN VOLUME NO. 37,
OF THE DEED RECORD OF ATASCOSA COUNTY, TEXAS

ONE ACRE DESCRIPTION

Beginning at a point 152.12 feet West and 29.10 feet North of the Southeast corner of Tract 4407;
Thence North 64° 30' East along the Northwest-southwest right-of-way line of Haul Road at 168.54 feet pass the East line of Tract 4407 and the West line of Tract 4423, continuing for a total distance of 208.71 feet;
Thence North 25° 30' West at 84.22 feet pass the West line of Tract 4423 and the East line of Tract 4407, continuing for a total distance of 208.71 feet;
Thence South 64° 30' West, 208.71 feet;
Thence South 25° 30' East, 208.71 feet to the place of beginning.
Containing 1.0 acres



SCALE: 1"=200'
DATE: 12-19-78

HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK, TEXAS

CERTIFIED CORRECT
M. J. STALCUP
REGISTERED SURVEYOR NO. 139

BK. PG.

516 PAGE 344

FIFTH TRACT

EXHIBIT 5

K

EASEMENT: ALONZO P. PEELER, JR., ET UX TO BRAZOS ELECTRIC POWER COOP., INC., ET AL
EASEMENT

THE STATE OF TEXAS :

COUNTY OF ATASCOSA :

4442

WHEREAS, under date of September 23, 1975, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, as Optionors, did execute an Option Agreement with BRAZOS ELECTRIC POWER COOPERATIVE, INC. of Waco, Texas, and SOUTH TEXAS ELECTRIC COOPERATIVE, INC. of Victoria, Texas, as Optionee, which Option Agreement granted to Optionees, among other things, an option to take an easement and right of way for haul road purposes over and across Optionors land and for an erection site tract, and which Easement and Right of Way are necessary to the Optionees for use in connection with their mining operations in Atascosa and McMullen Counties, Texas, and for their operation of a lignite-fired steam electric generating plant in the vicinity; and,

WHEREAS, Optionees have exercised their option to take this Easement and Right of Way over and across the lands hereinafter described and Optionors do hereby execute the following Easement and Right of Way in fulfillment of said Option Agreement:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That we, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, of the County of Atascosa and State of Texas, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars, and other good and valuable consideration to us in hand paid by BRAZOS ELECTRIC POWER COOPERATIVE, INC. of Waco, Texas, and SOUTH TEXAS ELECTRIC COOPERATIVE, INC. of Victoria, Texas, the receipt of which is hereby acknowledged; have Granted, and do hereby Grant an Easement and Right of Way to the said BRAZOS ELECTRIC POWER COOPERATIVE, INC. of Waco, Texas, and SOUTH TEXAS ELECTRIC COOPERATIVE, INC. of Victoria, Texas, on, over and across the following described tracts or parcels of land, lying and being situated in Atascosa County, Texas, to-wit:

See Exhibit 1, containing 7 pages, hereto attached.
covering the 15.66 ac. tract described on page 1 of the Exhibit.
This Easement and Right of Way are granted to the Grantees herein for the purpose of providing them with an erection site tract to be used primarily for erecting a drag line, but may also be used for erecting other items and may also become a part of the haul road.

Grantee herein must use due diligence to prevent its employees, contractors and sub-contractors who will be using the land covered by this Easement and Right of Way from carrying firearms or fishing equipment on to said land.

ENC. 449 PAGE 18

4442

The Right of Way over and across Haul Road A and Haul Road B herein described is to provide ingress and egress to and from lignite mines in the near vicinity of the aforementioned lignite-fired steam electric generating plant and to and from said generating plant to the mines. Said haul, roads are to be used for the transportation of lignite, fuels and other materials necessary to the operation of the aforementioned generating plant, and shall include the right to locate, construct, maintain and operate a railroad over and across the same.

Provided, however, that if any railroad is erected thereon, the Grantees herein must provide crossings for the livestock and vehicles of the Grantors herein, their heirs or assigns, where necessary in connection with their ranch operations.

The property covered by this Easement and Right of Way is to be fenced by Grantees with a good and substantial fence capable of turning livestock of ordinary demeanor.

And, furthermore, the Grantees herein, or their successors in interest, shall provide underground cattle crossings (approximately 8 in number) under such roadways at points reasonably necessary to connect the existing pastures as they are now located on the Grantors property adjacent to these haul roads.

It is further expressly agreed and stipulated that the Grantees herein shall use due care and diligence through watering, or other means reasonably necessary, to keep down dust resulting from their use of such haul roads, but it is not required that they pave any of such roads.

If the Grantees herein do exercise reasonable means and methods of keeping down dust and preventing its emission from such roadways, the Grantees herein, their successors in interest, are released and discharged from any damage that may be incurred on the adjacent property occasioned by such dust emitting from the haul roads.

It is further understood and agreed that the roadways provided for under this Easement and Right of Way shall not be open to the public, and that they will be used only for purposes reasonably necessary for the operation of Grantees electric generating plant and mines in the vicinity, and that such roadways are to be used only by its employees or agents that might be engaged in the mining operations or the operations of such generating plant and provided

4442

However, that Grantors herein, their heirs or assigns, agents, servants, or employees, shall be entitled to use such roadways.

This Easement and Right of Way shall terminate at such time as the properties described above are no longer ~~reasonably~~ necessary for the operation and maintenance of the lignite mines and/or the electric generating plant hereinabove referred to.

TO HAVE AND TO HOLD the hereinabove described Easement and Right of Way unto the Grantees hereinabove named, and their successors in interest, subject, however, to the terms and provisions hereinabove set forth.

EXECUTED this the 29th day of October,

A.D., 1976.


ALONZO M. PEELER, JR.

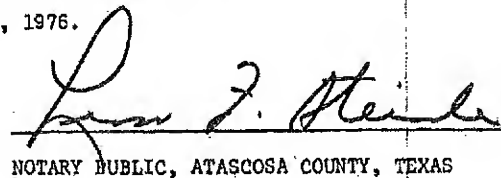

BARBARA GENE PEELER

THE STATE OF TEXAS :

COUNTY OF ATASCOSA :

BEFORE ME, the undersigned authority, on this day personally appeared ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this 29th day of October, A.D., 1976.


NOTARY PUBLIC, ATASCOSA COUNTY, TEXAS

EX-101 449 PAGE 20



EXHIBIT 1

ERECTION SITE TRACT

4442

Field notes for a 15.66 acre tract of land out of Tracts No.'s 4448, 4449, 4431, 4432, 4433, 4434, and 4435 of Block 227 of the Chas. F. Simmons Subdivision recorded Vol. 37 of the deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the North line of Tract 4448 that is 351.03 feet East of the Northwest corner of Tract No. 4448 of the Chas. F. Simmons Subdivision located in Atascosa County, Texas, and recorded in Vol. 37 of the deed records of Atascosa County, Texas, for the Northeast corner of this tract;

Thence West 351.03 feet to the Northwest corner of Tract 4448:

Thence North 30 feet to a point:

Thence West 166.28 feet to a point:

Thence Northwesterly around the arc of a curve to the right having a radius of 1400.29 feet, a distance of 662.89 feet to a point in Tract No. 4431 for the Northwest corner of this tract;


Thence Southerly across Tract 4431 through 4435 around the arc of a curve to the right having a radius of 2380 feet (the center point of said radius being South 74° 48' 30" West 2380 feet from said Northwest corner) a distance of 1471.44 feet, same having a chord bearing and distance of South 2° 31' 12" West 1448.12 feet to a point in said Tract No. 4435 for the South corner of this tract; Whence the Southeast corner of Tract 4435 bears South 27.28 feet and East 868.36 feet;

Thence North 44° 00' East across Tracts 4435, 4434, 4433, 4449, 4448, a distance of 1755.39 feet to the place of beginning.

Containing 15.66 acres of land.

HICKS & RAGLAND ENGINEERING CO., INC.

Certified Correct


M. J. Stalcup
Registered Public Surveyor
October 8, 1976

LYOL 449 PAGE 21

4442

REVISED DESCRIPTION FOR PROPOSED HAUL ROAD "A" AND "B" RIGHT-OF-WAY

Beginning at Engineers Station 0+00, said beginning point being in the North line of Tract No. 3726, Block 197 of the Dr. Chas. F. Simmons Subdivision located in Atascosa County, Texas, recorded in Vol. No. 37 of the Deed Records of Atascosa County, said point being 70 feet West of the N.E. corner of Tract 3726, also being 100 feet West of a 2" iron pipe set for the Northwest corner of Tract No 3742, of said Subdivision:

Thence South along Engineers centerline, said centerline being 150 feet East of the West line and 100 feet West of the East line of the right-of-way of this proposed haul road, across said subdivision Tracts Number 3726 through 3732 in Block 197; and 4161 and 4162, 3023.6 feet to Station 30+23.6 in Tract 4163 of Block 211, for the beginning of a curve; Whence the N.E. corner of said Tract 4163 bears North 23.6 feet and East 70.0 feet;

Thence Southwesterly along said centerline across Tract No. 4163 around the arc of a curve to the right having a radius of 2838.64 feet, said West right-of-way line being 150 feet Westerly from and parallel to said centerline, and the East right-of-way line being 100 feet East of said centerline at Station 30 + 23.6, said East right-of-way line running thence South along the West line of Tract No. 4179 of said Block No. 211 a distance of 306.4 to the Southwest corner of said Tract No. 4179; (being a point 116.58 feet East of Engineers centerline at Station 33 + 30.60), and then thence East along the South line of said Tract 4179 to a point a distance of 150 feet Easterly from said centerline (this being the beginning of a 300 foot wide right-of-way), continuing the centerline description around said curve to the right and being along the centerline of a 300 foot wide right-of-way across Tract 4164, a total center line distance of 653.98 feet to Engineers Station 36 + 77.58 in Tract No. 4165 for the end of this curve and the beginning of a curve to the left;

Thence Southerly across Tract 4165 and Tract 4166; around the arc of a curve to the left having a radius of 2838.64 feet, a distance of 653.98 feet to the end of this curve for Engineers Station 43 + 31.56 in the South line of said Tract No. 4166; Whence the S.E. corner of Tract 4166 bears East 220 feet;

Thence South along the centerline of said 300 feet right-of-way across Tracts 4167 through 4172, a distance of 2033.32 feet to a point in Tract No. 4173 for Engineers Station 63 + 64.88, the beginning of a curve to the left;

Thence Southeasterly along said centerline around the arc of a curve to the left having a radius of 2230 feet, said right-of-way being across or a part of Tracts 4173, 4174, 4175, 4176, 4191, and 4192 of Block 221, a distance of 1264.92 feet to Engineers Station 76 + 29.8 for the end of this curve and the beginning of another curve to the left, same being Engineers Station 0 + 00 of Haul Road "B" (later described):.

Thence Southeasterly around the arc of a curve to the left having a radius of 1250.25 feet, across Tracts 4430 and 4431, a distance of 1254.75 feet to Engineers Station 88+84.55 for the end of this curve;

4442

Thence East at 166.28 feet EXIT A. M. Peeler, Jr., property at a point in the east line of said Tract No. 4431 at Engineers Station 90+50.83, (said point being 150 feet South of the N.E. corner of said Tract No. 4431), continuing East crossing Tract No. 4447, a total distance of 1486.28 feet to Engineers Station 103+70.83 in the East line of said Tract No. 4447, the beginning of a curve to the left and ENTER A. M. Peeler Jr., property; Whence the N.E. corner of Tract 4447 bears North 150 feet:

Thence Northeasterly around the arc of a curve to the left having a radius of 4590.22 feet, across A. M. Peeler, Jr. property in Tract No. 6555, a distance of 1321.89 feet to Engineer Station 116+92.72 for the end of curve;

Thence North 73°30' East across Tracts 6555 and 4811, a distance of 1321.81 feet to a point in Tract 4811 for Engineers Station 130+14.53 and the beginning of a curve to the left;

Thence Northeasterly around the arc of a curve to the left having a radius of 2714.79 feet, across Tracts 6555, 4811, 4827, and 4826, a distance of 1419.09 feet to a point in Tract 4825 for Engineer Station 104+33.62 for the end of this curve and the beginning of another curve to the left;

Thence Northeasterly around the arc of a curve to the left having a radius of 7614.60 feet, across Tracts 4825, 4824, 4834 through 4841, 4851, and 4850, a distance of 2928.23 feet to Engineers Station 173+61.84 for the end of this curve;

Thence North 21° 31' East across tracts 4834, 4833, 4832, and 4844 through 4850, at 1816.68 feet EXIT A. M. Peeler, Jr. property at Engineer Station 191+78.53, said exit point being in a center of the right-of-way line of an open dirt county road, at 1837.56 feet ENTER A. M. Peeler, Jr. property on the south line of Tract 4844 at Engineer Station 191+99.41, continuing for a total distance of 1925.7 feet to a point in Tract 4844 for Engineer Station 192+87.55, and the beginning of a curve to the right;

Thence Northeasterly around the arc of a curve to the right having a radius of 2438.58 feet at 273.17 feet pass the North line of Tract 4844, at 280.88 feet pass Engineer Station 195+68.43 in an East-West fence line to ENTER A. M. Peeler, Jr. property, continuing around said curve across said Peeler property and Tracts 3844, 3843, 3842, and 3859, a total distance of 1326.49 feet to Engineer Station 206+14.04 in Tract 3858 for the end of this curve;

Thence North 52°41' East across Tracts 3855 through 3859, 3868 through 3872, 3885, 3884, and 3883, a distance of 4464.61 feet to a point in Tract 3882 for Engineer Station 250+78.65, and the beginning of a curve to the right;

Thence Northeasterly around the arc of a curve to the right having a radius of 2864.94, across Tracts 3882, 3881, 3898, 3897, 3896, and 3913, a distance of 1865.93 feet to a point in Tract 3912 for Engineer Station 269+44.58 for the end of this curve;

4442

Thence East across Tracts 3912 and 3913, a distance of 1073.47 feet to Engineer Station 280+18.05 and the beginning of a curve to the left; Whence the Southeast corner of Tract 3912 bears South 100 feet and East 159.66 feet;

Thence Northeasterly around the arc of a curve to the left having a radius of 2100.08 feet, across Tracts 3912, 1913, 3926 through 3929, 3943, and 3942, a distance of 2283.77 feet to a point in Tract 3941 for Engineer Station 303+01.82 and the end of this curve.

Thence North 27° 41' 34" East across Tracts 3941, and 3444 through 3447, at 1632.94 feet EXIT A.M. Peeler, Jr. property on the South line of Tract 3443, being Engineer Station 319+34.76; at 2005.63 feet leave Tract 3443 (description of right-of-way across Tract discribed below) and ENTER A. M. Peeler, Jr. property, being Engineer Station 323+07.45 on the South line of Tract 3442, continuing across 3450 through 3459, and 3467, at 4992.43 EXIT A. M. Peeler, Jr. property on the West line of Tract 3466, being Engineer Station 352+94.25, at 5359.85 leave Tract 3466 (description of right-of-way across Tract 3466 described below) and ENTER A.M. Peeler, Jr. property at Engineer Station 356+61.67 on the South line of Tract 3465, continuing for a total distance of 5637.98 feet to a point in Tract 3465 for Engineer Station 359+39.80, the beginning of a curve to the left:

Thence Northerly around the arc of a curve to the left having a radius of 1691.15 feet, across Tracts 3465, 3464, and 2941, through 2945, a distance of 1806.18 feet to Engineer Station 377+45.98 in Tract 2942 for the end of this curve:

Thence North 33° 30' West across Tracts 2942, 2941, 2940, 2925, and 2924, at 844.71 feet EXIT A.M. Peeler, Jr. property at Engineer Station 385+90.69 on the South line of Tract 2923, at 1240.45 feet leave Tract 2923 (description of right-of-way in Tract 2923 described below) and ENTER A.M. Peeler, Jr. property at Engineer Station 389+86.43 on the South line of Tract 2922, continuing for a total of 1345 feet to a point on Tract 2922 for Engineer Station 390+90.98, the beginning of a curve to the right;

Thence Northerly around the arc of a curve to the right having a radius of 1280 feet, across Tracts 2919 through 2922, 2907, 2934, and 2933 a distance of 1847.97 feet to a point in Tract 2933 for Engineer Station 409+38.95 and the END of this right-of-way;

Containing a total of 278.17 acres in right-of-way, less the following five tracts, being more particularly described as follows;

First Tract: All of the North 300 feet of Tract No. 4447 containing 9.09 acres.

Second Tract: That part of Tract 4845, including roads, being more particularly described as follows:

Beginning at Engineers Station 191+78.53 in the centerline of an open county road:

Thence North 28° 32' West along the center of said County road, 22.11 feet to a point in the North line of Tract No. 4845:

Thence East along the North line of Tract No. 48, at 18.22 feet pass Engineer Station 191+99.41 on the centerline of the 300 foot wide right-of-way, continuing for a total distance of 179.46 feet to a point in the East line of said right-of-way; whence the Northeast corner of Tract 4845 bears East 522.03 feet: 4442

Thence South $21^{\circ} 31'$ West along said right-of-way, 205.51 feet to a point in the center of said county road:

Thence North $28^{\circ} 32'$ West along said road, a distance of 195.67 feet to the place of beginning.

Containing 0.39 acres.

Third Tract: That part of Tract No. 3443, being more particularly described as follows:

Beginning at Engineers Station 319+34.76 in the South line of Tract 3443; whence the Southeast corner of Tract bears East 211.26 feet:

Thence West along said Tract line 169.41 feet to a point;

Thence North $27^{\circ} 41' 34''$ East 372.69 feet to a point in the North line of Tract 3443;

Thence East along said Tract line, at 169.41 feet pass Engineers Station 323+07.45 on the centerline of the 300 foot wide right-of-way, continuing for a total distance of 207.47 feet to the Northeast corner of said Tract 3443;

Thence South along the East line of said Tract 3443, 250.26 feet to a point in the east line of said 300 foot wide right-of-way;

Thence South $27^{\circ} 41' 34''$ West along said right-of-way, 90.05 feet to a point in the South line of Tract 3443;

Thence West 169.41 feet to the place of beginning.

Containing 2.19 acres.

Fourth Tract: That part of Tract 3466, being more particularly described as follows:

Beginning at Engineers Station 352+94.28 in the West line of Tract No. 3466; Whence the Southwest Corner of Tract 3466 bears South 4.69 feet;

Thence North along the West line of said Tract 3466, 322.76 feet to a point;

Thence North $27^{\circ} 41' 34''$ East along the Westerly line of the previously described 300 wide right-of-way, a distance of 2.88 feet to a point in the North line of said Tract 3466;

Thence East along the North line of said Tract 3466, at 169.41 feet pass Engineers Station 356+61.67 on the centerline of said 300 feet wide right-of-way continuing for a total of 338.82 feet to a point in the East line of said 300 foot right-of-way;

Thence South $27^{\circ} 41' 34''$ West along said right-of-way, 372.69 feet to a point in the South line of Tract 3466;

Thence West along the South line of Tract 3466, 166.95 feet to the Southwest corner of Tract 3466: 42

Thence North 4.69 feet to the place of beginning

Containing 1.93 acres.

4442

Fifth Tract: That part of Tract No. 2923, being more particularly described as follows:

Beginning at Engineers Station 385+90.69 in the South line of Tract No. 2923; Whence the Southeast corner of Tract 2923 bears East 253.45 feet;

Thence West along the South line of Tract 2923, 179.88 feet to a point in the Westerly line of the previously described 300 foot wide right-of-way;

Thence North 33° 30' West along said right-of-way line, 395.74 feet to a point in the North line of Tract 2923;

Thence East along the North line of said Tract 2923, at 179.88 feet pass Engineers Station 389+86.43 on the centerline of said 300 foot wide right-of-way, continuing for a total distance of 359.76 feet to a point in the East line of said 300 foot wide right-of-way.

Thence South 33° 30' East along said right-of-way, 395.74 feet to a point in the South line of Tract 2923;

Thence West along the South line of Tract 2923, 179.88 feet to the place of beginning.

Containing 2.72 acres.

Containing a net acres of right-of-way in Road "A" on A. M. Peeler, Jr. property of 261.85 acres.

Description for proposed haul road "B" right-of-way

Beginning at Haul Road "A" Engineers Station 76 + 29.8 in Tract No. 4192, for Station 0+00 of this right-of-way, said point being the beginning of a curve to the right, the center of said curve bearing South 57° 30' West 2230 feet;

Thence Southerly around the arc of said curve to the right along the centerline of a 300 foot wide right-of-way across Tracts No. 4192, 4430, 4131, 4432, 4433, 4434, 4435, 4436, 4437, 4438, 4420, 4421, 4422, and 4423, at a distance of 505.82 feet pass the South right-of-way line of Road "A" continuing for a total distance of 3775.32 to Engineers Station 37+75.32 in Tract No. 4423 for the end of this curve;

Thence South 64° 30' West across Tracts No. 4423, 4424, 4407, and 4408; a distance of 819.08 feet to Engineers Station 45+94.4 in a fence held for the property line, for the end of this 300 foot right-of-way on A.M. Peeler, Jr. property.

Containing 28.39 acres.

Summation of acres of land in right-of-way:

4442

Total acres Road "A" : 278.17

Less acres in first through fifth
described tracts: : 16.32

Net Acres Road "A" : 261.85

Net Acres Road "B" : 28.39

Containing a Total Net Acres of : 290.24

HICKS & RAGLAND ENGINEERING CO., INC.

Certified Correct:


M. J. Stalcup

Registered Public Surveyor

Licensed State Land Surveyor

Revised October 23, 1976

VOL. 449 PAGE 27

L

AMENDED EASEMENT NO. 1

THE STATE OF TEXAS :

COUNTY OF ATASCOSA :

WHEREAS, under date of October 29, 1976, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, did execute and deliver an Easement and Right of Way to BRAZOS ELECTRIC POWER COOPERATIVE, INC. of Waco, Texas, and SOUTH TEXAS ELECTRIC COOPERATIVE, INC. of Victoria, Texas, covering 15.66 acres of land to be used as an Erection Site Tract the same being described in Exhibit 1 of said Easement, and a Right of Way over Haul Road A; and Haul Road B each with a proper description thereof likewise being attached thereto and which Right of Way and Easement appears of record in Vol. 449, pages 18-27 of the D/R of Atascosa County, Texas, to which reference is hereto made for all pertinent purposes; and,

WHEREAS, an error was made in the Field Note description to the erection site tract described in Exhibit 1 attached to said Easement; and

WHEREAS, it is the desire and intent of all parties to said Easement and Right of Way to amend the aforementioned instrument to properly describe the erection site tract;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That we, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, of the County of Atascosa and State of Texas, for and in consideration of the premises and of the sum of Ten and no/100 (\$10.00) Dollars, to us in hand paid by BRAZOS ELECTRIC POWER COOPERATIVE, INC. of Waco, Texas, and SOUTH TEXAS ELECTRIC COOPERATIVE, INC. of Victoria, Texas, the receipt of which is hereby acknowledged; have Granted, and do hereby Grant an Easement and Right of Way to the said BRAZOS ELECTRIC POWER COOPERATIVE, INC. of Waco, Texas, and SOUTH TEXAS ELECTRIC COOPERATIVE, INC. of Victoria, Texas, on, over and across the following described tracts or parcels of land, lying and being situated in Atascosa County, Texas, to-wit:

See Exhibit 1, containing 1 page, hereto attached,


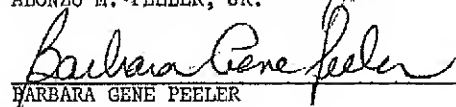
This Easement and Right of Way, covering the 15.66 acre tract described on Exhibit 1 hereto attached are granted to the Grantees herein for the purpose of providing them with an erection site tract to be used primarily for erecting a drag line, but may also be used for erecting other items and may also become a part of the haul road.

This instrument is executed by Grantors herein solely for the purpose of amending the field note description of the 15.66 acres of land to be included in the Easement and is in lieu of the field note description of the erection site tract included in the original Easement.

All other terms and provisions of the original Easement appearing of record in Vol. 449, pages 18-27 of the Deed Records of Atascosa County, Texas, are hereby ratified and confirmed and such terms and provisions shall be applicable to the acreage covered by the amended field note description of the erection site tract attached hereto in Exhibit 1.

Grantees in this Amended Easement signify their acceptance of this instrument and the terms thereof by their filing this instrument of record in the County Clerk's Office of Atascosa County, Texas.

Executed this the 23rd day of March, A.D., 1977.


ALONZO M. PEELER, JR.

BARBARA GENE PEELER

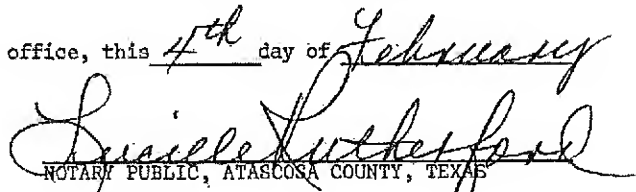
THE STATE OF TEXAS :

COUNTY OF ATASCOSA:

BEFORE ME, the undersigned authority, on this day personally appeared ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed,

GIVEN under my hand and seal of office, this 4th day of February, 1980.




NOTARY PUBLIC, ATASCOSA COUNTY, TEXAS

BOOK 520 PAGE 33

EXHIBIT 1

ERECTION SITE TRACT

CORRECTED

Field notes for a 15.66 acre tract of land out of Tracts No.'s 4448, 4449, 4431, 4432, 4433, 4434, and 4435 of Block 227 of the Chas F. Simmons Subdivision recorded Vol. 37 of the deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the North line of Tract 4448 that is 351.03 feet East of the Northwest corner of Tract No. 4448 of the Chas F. Simmons Subdivision located in Atascosa County, Texas, and recorded in Vol. 37 of the deed records of Atascosa County, Texas, for the Northeast corner of this tract;

Thence West 351.03 feet to the Northwest corner of Tract 4448:

Thence North 30 feet to a point:

Thence West 166.28 feet to a point:

Thence Northwesterly around the arc of a curve to the right having a radius of 1400.29 feet, a distance of 662.89 feet to a point in Tract No. 4431 for the Northwest corner of this tract;

Thence Southerly across Tract 4431 through 4435 around the arc of a curve to the right having a radius of 2380 feet (the center point of said radius being South 74° 48' 30" West 2380 feet from said Northwest corner) a distance of 1471.44 feet, same having a chord bearing and distance of South 2° 31' 12" West 1448.12 feet to a point in said Tract No. 4435 for the South corner of this tract; Whence the Southeast corner of Tract 4435 bears South 57.28 feet and East 868.36 feet;

Thence North 44° 00' East across Tracts 4435, 4434, 4433, 4449, 4448, a distance of 1755.39 feet to the place of beginning.

Containing 15.66 acres of land.

HICKS & RAGLAND ENGINEERING CO., INC.

Certified Correct


M. J. Stalcup

Registered Public Surveyor
January 21, 1977

BOOK 520 PAGE 34

M

AMENDED EASEMENT NO. 2

THE STATE OF TEXAS :

COUNTY OF ATASCOSA :

WHEREAS, under date of October 29, 1976, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, did execute and deliver an Easement and Right of Way to Brazos Electric Power Cooperative, Inc. of Waco, Texas, and South Texas Electric Cooperative, Inc. of Jourdan, Texas, covering 15.66 acres of land to be used as an erection site tract which was described in Exhibit 1 of said Easement, and a Right of Way over Haul Road A and Haul Road B, each being likewise described in said Exhibit 1, which Easement appears of record in Vol. 449, at pages 18-27 of the Deed Records of Atascosa County, Texas, to which reference is here made for all pertinent purposes; and,

WHEREAS, under date of March 23, 1977, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, did execute and deliver to the same aforementioned Grantees an Amended Easement, which amendment corrected the field note description to the 15.66 acre tract of land to be utilized as the erection site tract, which Amended Easement appears of record in Vol. 520 at page 32-35 of the Deed Records of Atascosa County, Texas; and,

WHEREAS, SAN MIGUEL ELECTRIC COOPERATIVE, INC., is now the owner and holder of the aforementioned Easement and Right of Way as the successor in interest to Brazos Electric Power Cooperative, Inc. and South Texas Electric Cooperative, Inc.; and,

WHEREAS, said SAN MIGUEL ELECTRIC COOPERATIVE, INC. has requested this Amended Easement Number Two of ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER for the purpose of erecting and maintaining retention ponds for water accumulating adjacent to the properties covered under the aforementioned original Easement and Right of Way and the Amendment thereto, to which the Grantors have agreed:

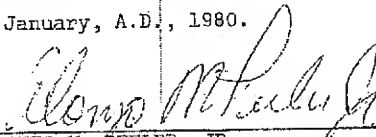
NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That we, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, of the County of Atascosa and State of Texas, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars and other good and valuable consideration to us in hand paid by SAN MIGUEL ELECTRIC COOPERATIVE, INC., of Jourdan, Texas, the receipt and sufficiency of which is hereby acknowledged, have Amended, and do hereby Amend by this Amendment Number Two the aforementioned Easement and Right of Way and its First Amendment thereto so that the following described eight (8) parcels of land will be included in the aforementioned Easement and Right

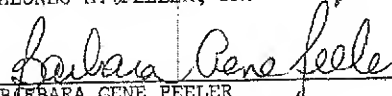
of Way, to-wit:

Said eight (8) parcels are attached hereto marked Exhibits 1 through eight (8) inclusive,

and Grantors herein do hereby grant an Easement and Right of Way to SAN MIGUEL ELECTRIC COOPERATIVE, INC. of Jourdanton, Texas, on, over and across the aforementioned eight (8) parcels of land which are hereby designated as retention ponds for the purpose of retaining water that accumulates thereon, and in accordance with all of the other terms and provisions of the original Easement and Amended Easement hereinbefore referred to.

EXECUTED on this the 18th day of January, A.D., 1980.


ALONZO M. PEELER, JR.

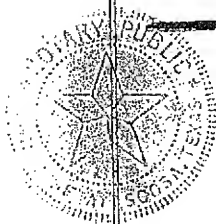

BARBARA GENE PEELER

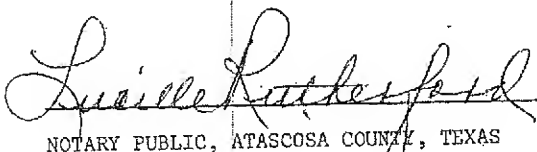
THE STATE OF TEXAS :

COUNTY OF ATASCOSA :

BEFORE ME, the undersigned authority, on this day personally appeared ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this 4th day of February, A.D., 1980.




NOTARY PUBLIC, ATASCOSA COUNTY, TEXAS

Description for a 3.237 acre tract for retention pond use, out of parts of Farm Tracts No. 4436, 4435, 4434, 4433, and 4419 of the Chas. F. Simmons subdivision recorded in Vol. 37 deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the West right-of-way line of a road that is referred to as the "South" Haul road, said point being 150 feet right of said haul road centerline Station 22+55.2; Whence the Northwest corner of Farm Tract 4436 of the Chas. F. Simmons Subdivision, recorded in Vol. 37 of the deed records of Atascosa County, Texas, bears North 13.42 feet and West 96.88 feet.

Thence North $65^{\circ} 09' 38''$ West along a fence a distance of 155.3 feet to a fence corner;

Thence Northeasterly along a fence around the arc of a curve to the left having an approximate radius of 1932 feet, a chord bearing and distance of North $18^{\circ} 14' 35''$ East 548.6 feet to a point in said fence:

Thence continuing along said fence and radius, a chord bearing and distance of North $4^{\circ} 41' 39''$ East 342.4 feet to a fence corner;

Thence South $89^{\circ} 49' 26''$ East along said fence, a distance of 142.3 feet to a point in the West right-of-way of said South haul road,

Thence Southwesterly along said right-of-way around the arc of a curve to the right having a radius of 2080 feet, a chord bearing and distance of South $12^{\circ} 15' 11''$ West 948.3 feet to the place of beginning.

Containing 3.237 acres of land.

Description for a 0.3118 acre tract for retention pond use out of Tract 4436 of the Chas. F. Simmons Subdivision recorded in Vol. 37, Deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the East R.O.W. line the "South" haul road, said point being 150 feet left of haul road centerline Station 22+89.45', Whence the Northwest corner of Farm Tract No. 4436 of the Chas. F. Simmons Subdivision recorded in Vol. 37 Deed records of Atascosa County, Texas, bears North 176.4 feet and West 351.2 feet:

Thence South 69° 59' 27" East along a fence, a distance of 75.2 feet to a fence corner:

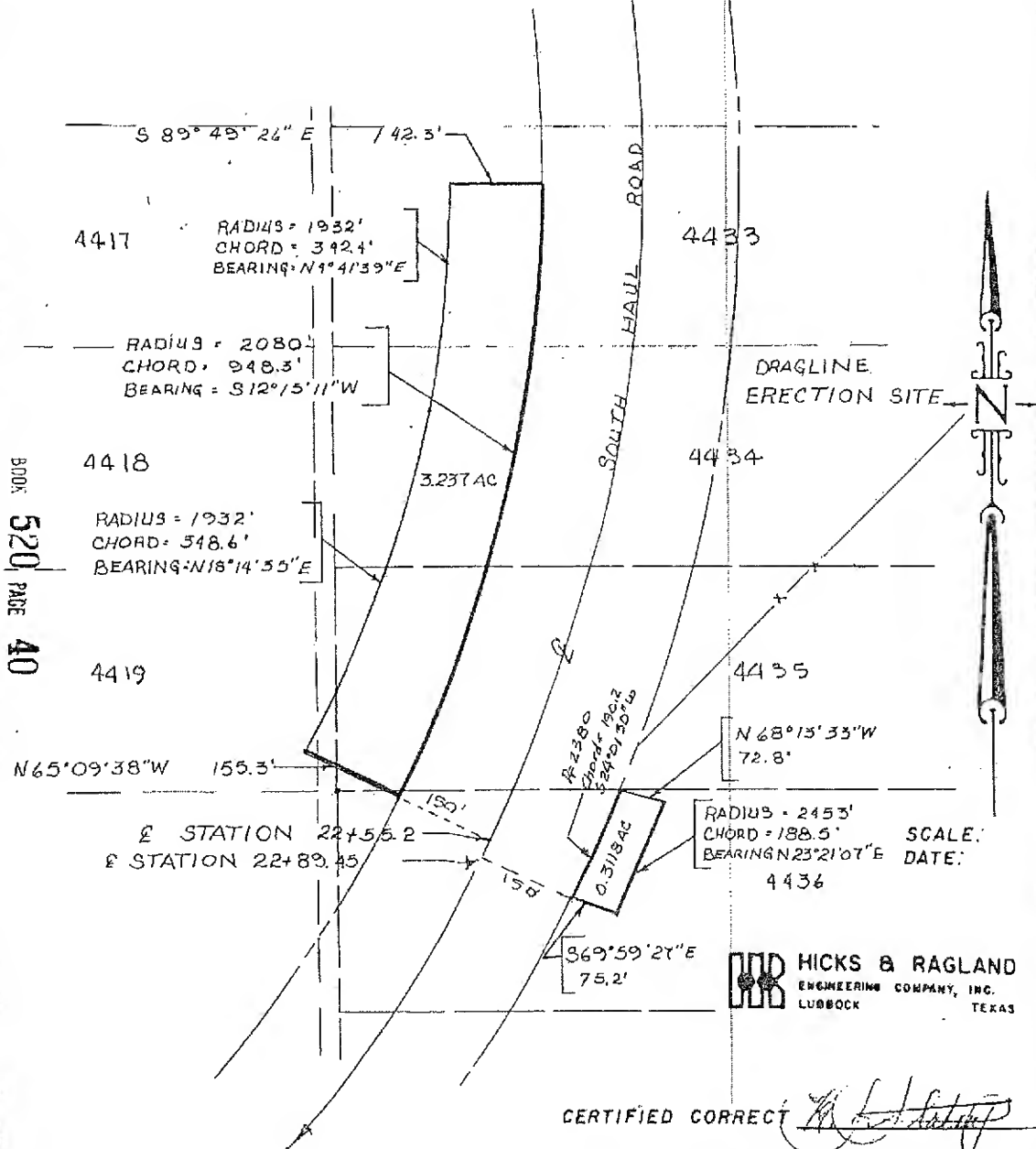
Thence Northeasterly along a fence around the arc of a curve to the left having a radius of approximately 2453 feet, a chord bearing and distance of North 23°21'07" East, 188.5 feet to a fence corner:

Thence North 68° 13' 33" West along a fence, a distance of 72.8 feet to a point in the East right-of-way line of said haul road;

Thence Southwesterly along said right-of-way around the arc of a curve to the right having a radius of 2380 feet, a chord bearing and distance of South 24° 01' 30" West 190.2 feet to the place of beginning.

Containing 0.3118 acres of land

RETENTION POND



Description for a 2.073 acre tract for retention pond use out of Farm Tracts No.s 4827, 4826, and 4810, of the Chas. F. Simmons Subdivision recorded in Vol. 37, deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the North R.O.W. line of the San Miguel North mine haul road, said point being 150 feet left of haul road centerline Station 132+25.2; Whence the N.W. corner of said Farm Tract 4827 bears North 67.8 feet and West 17 feet:

Thence North 25° 06' West along a fence 269.2 feet;

Thence North 65° 23' East along a fence 334.5 feet;

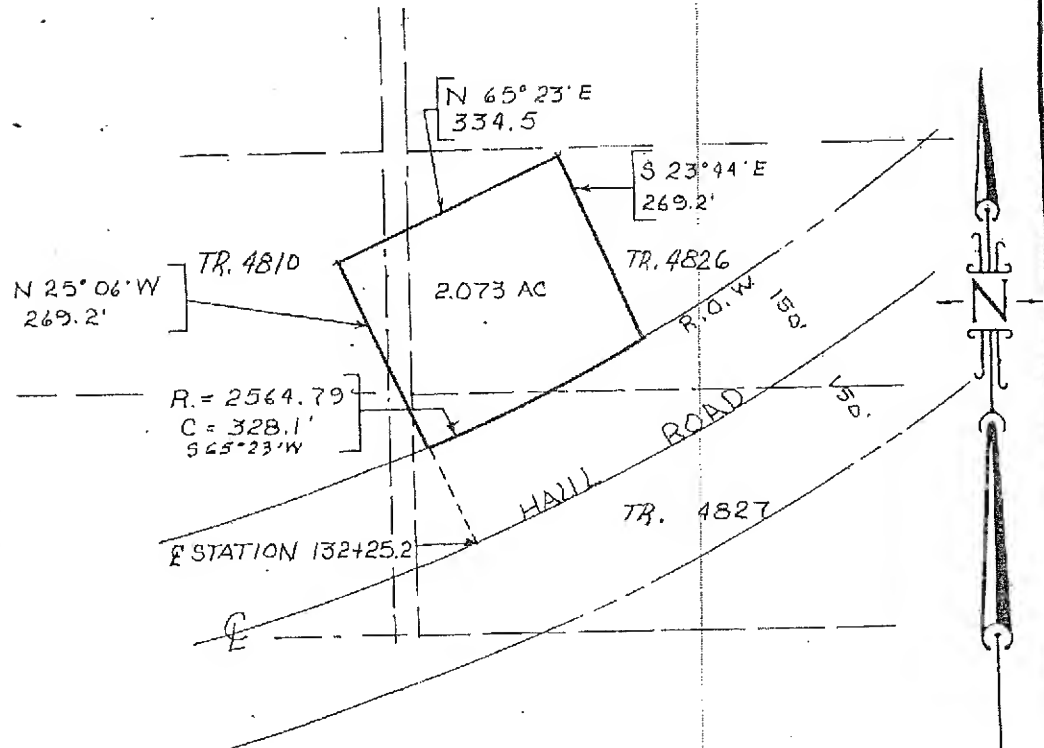
Thence South 23° 44' East along a fence 269.2 feet to a point in the North R.O.W. of said haul road;

Thence Southwesterly along said R.O.W. around the arc of a curve to the right having a radius of 2564.79 feet, a chord bearing and distance of South 65° 23' West, 328.1 feet to the place of beginning.

Containing 2.073 acres of land.

RETENTION POND

BOOK 520 PAGE 42



SCALE:
DATE:



HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK TEXAS

CERTIFIED CORRECT

[Signature]

EXHIBIT 4

Description of a 1.493 acre tract for retention pond use out of Farm Tracts No.s 4834 and 4833, of the Chas. F. Simmons Subdivision recorded in Vol. 37 of the deed records of Atascosa County, Texas and being more particularly described as follows:

Beginning at a point in the Westerly R.O.W. line of the San Miguel North haul road, said point being 150 feet left of the haul road centerline Station 172+61.6; Whence the North-east corner of said Tract No. 4834 bears North 97.7 feet and East 183.5 feet;

Thence North $67^{\circ} 58'$ West along a fence, 231.2 feet;

Thence North $19^{\circ} 23'$ East 273 feet;

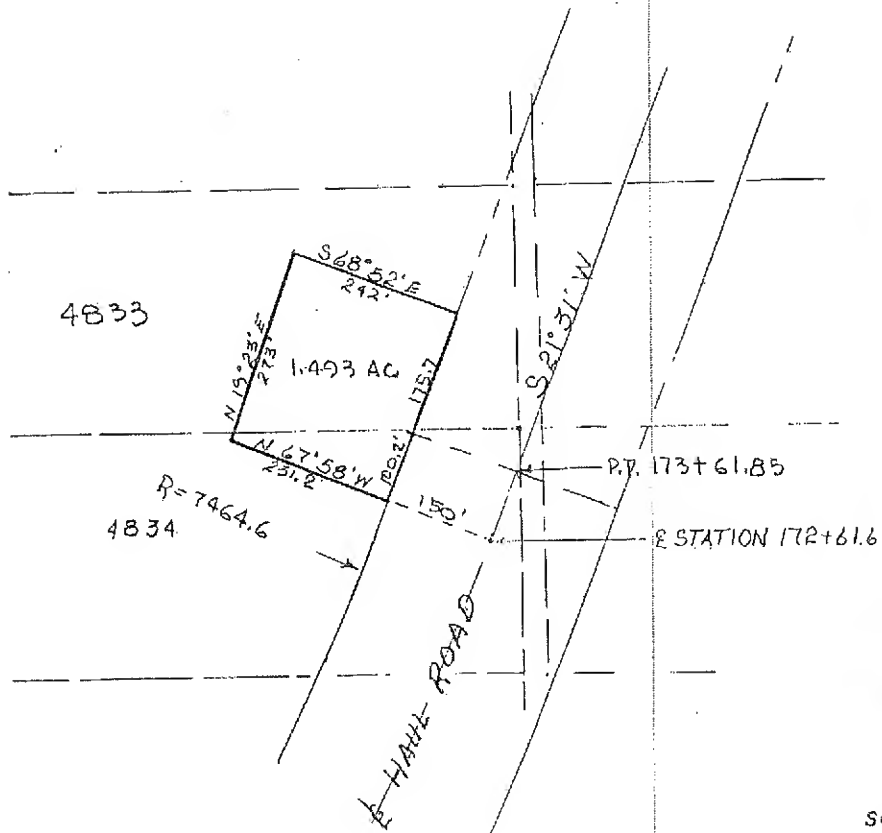
Thence South $68^{\circ} 52'$ East 242 feet to a point in said R.O.W.

Thence South $21^{\circ} 31'$ West along said R.O.W. 175.7 feet;

Thence Southwesterly around the arc of a curve to the right having a radius of 7464.6 feet, 100.2 feet to the place of beginning.

RETENTION POND

BOOK 520 PAGE 44



HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK TEXAS

CERTIFIED CORRECT

[Signature]

Description for a 0.887 acre tract of land for retention pond use out of Farm Tract No. 3927 of the Chas F. Simmons Subdivision recorded in Vol. 37, deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the North right-of-way of the San Miguel North mine haul road, said point being 150 feet left of haul road centerline station 287+58.04; whence the Southwest corner of Farm Tract No. 3927 bears West 483.35 feet and South 39.77 feet;

Thence North $20^{\circ} 09' 30''$ West 119.6 feet;

Thence North $65^{\circ} 10'$ East 304.6 feet;

Thence South $28^{\circ} 04' 19''$ East 119 feet to a point in the North right-of-way line of said haul road;

Thence Southwesterly around the arc of a curve to the right having a radius of 1950.08 feet, a chord bearing and distance of South $65^{\circ} 05' 42''$ West 321.09 feet to the place of beginning.

Containing 0.887 acres of land.

RETENTION POND

BOOK 520 PAGE 46

3927



SCALE:
DATE:

HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK TEXAS

CERTIFIED CORRECT

[Signature]

BK. 2- PG. A-1

Description for a 2.183 acre tract for retention pond use out of Tract 6555 of the Chas. F. Simmons Subdivision recorded in Vo. 37, deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the North right-of-way of the San Miguel Mine North Haul road, said point being 150 feet left of centerline station 106+25.14; Whence the Northwest corner of said Farm Tract 6555 and Southwest Corner of Tract 4795 bears North 353.2 feet and West 216.0 feet;

Thence North 5° 25' 15" West 306.4 feet;

Thence North 86° 24' 24" East 314.5 feet;

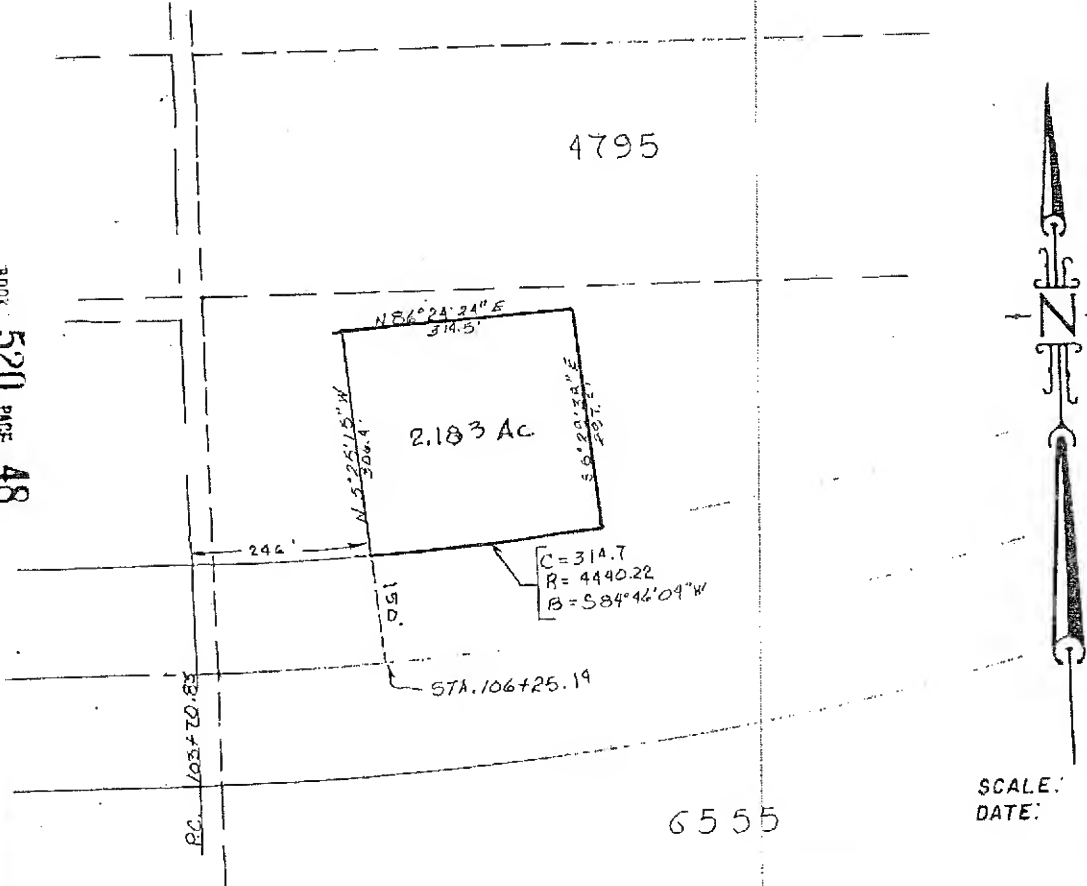
Thence South 5° 29' 38" East 297.4 feet to a point in the North R.O.W. of said haul road;

Thence Southwesterly around the arch of a curve to the right having a radius of 4440.22 feet, a chord bearing and distance of South 84° 46' 04" West 314.7 feet to the place of beginning.

Containing 2.183 acres of land.

RETENTION POND

BOOK 520 PAGE 48



HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK TEXAS

CERTIFIED CORRECT *[Signature]*

BK. 2 PG 25

EXHIBIT 7

Description for a 1.206 acre tract for retention pond use out of Farm Tract No. 3913 of the Chas. F. Simmons Subdivision recorded in Vol. 37 deed records of Atascosa County, Texas, and being more particularly described as follows:

Beginning at a point in the South right-of-way of the San Miguel North mine haul road, said point being 150 feet right of said haul road centerline Station 279+51.05;

Whence the Northeast corner of said Tract No. 3913 bears North 50 feet and East 226.7 feet;

Thence South $0^{\circ} 18'$ West 150 feet;

Thence West 349.7 feet;

Thence North $0^{\circ} 11'$ West 150 feet to a point in the South R.O.W. line of said haul road;

Thence East along said R.O.W. 351 Feet to the place of beginning.

Containing 1.206 acres of land.

RETENTION POND

BOOK 520 PAGE 50



SCALE:
DATE:

HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK TEXAS

CERTIFIED CORRECT

[Signature]

Description for a 1.837 acre tract for retention pond use out of Farm Tracts No's 3883 and 3884 of the Chas. F. Simmons Subdivision recorded in Vol. 37, deed records of Atascosa County, Texas and being more particularly described as follows:

Beginning at a point in the Easterly R.O.W. line of the North haul road, said point being 150 feet right of haul road centerline Station 248 + 99.15; Whence the Northeast corner of Farm Tract 3883 bears North 54.6 feet and East 351.75 feet;

Thence South 37° 19' East 200 feet to a point;

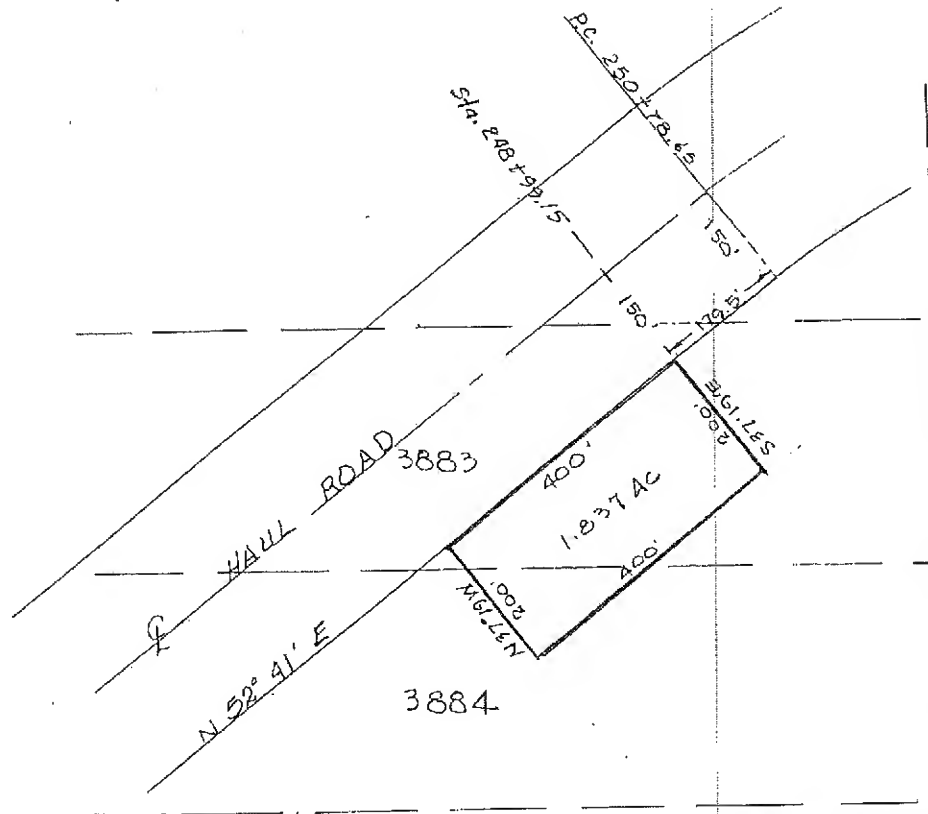
Thence South 52° 41' West 400 feet to a point;

Thence North 37° 19' West 200 feet to a point in the Easterly R.O.W. of said haul road;

Thence North 52° 41' East along said R.O.W. 400 feet to the place of beginning.

Containing 1.837 acres of land.

BOOK 520 PAGE 52



SCALE:
DATE:



HICKS & RAGLAND
ENGINEERING COMPANY, INC.
LUBBOCK TEXAS

CERTIFIED CORRECT

BK. 2 PG 28

B. J. Hartney

CERTIFICATE OF RECORD

THE STATE OF TEXAS
COUNTY OF ATASCOSA

I, ELIDIA SEGURA, Clerk of the County Court, in and for said

County, do hereby certify that the foregoing instrument of writing, with its certificate of authentication, was filed for record in my office the 5 day of Feb, A.D. 1980 at 11:45 o'clock A.M. and duly recorded the 6 day of Feb, A.D. 1980 at 8:30 o'clock A.M. in Deed Records of said County in Vol. 520 on Pages 36-53.

IN TESTIMONY WHEREOF, witness my hand and official seal at office, this 6 day of February, A.D. 1980.

By *Elidia Segura*
Deputy,

ELIDIA SEGURA
Clerk, County Court, Atascosa County

<p>AMENDMENT NUMBER TWO</p> <p>426 520/362</p>	<p>Alonzo M. Peelen, Jr., et ux</p> <p><i>Buy Return</i> San Miguel Electric Cooperative</p> <p><i>Jourdanton 20402</i> 78026</p>	<p>Filed for Record</p> <p>5 Day of Feb 19 80</p> <p>at 11:45 o'clock A.M.</p> <p>ELIDIA SEGURA</p> <p>County Clerk, Atascosa County</p> <p>By <i>Janice Bautista</i> Deputy</p>	<p>BOOK 520 PAGE 53</p> <p>STEINLE, STEINLE AND WETHEBER</p> <p>Attorneys at Law</p> <p>JOURDANTON, TEXAS 78026</p> <p><i>37.00</i></p>
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N

AMENDED EASEMENT NO. 3

42225

FILED FOR RECORD

01 FEB 20 PM 3:38⁸

THE STATE OF TEXAS :
COUNTY OF ATASCOSA :

LAQUITA HAYDEN
ATASCOSA COUNTY CLERK

DEPUTY

pd. 23.

WHEREAS, under date of October 29, 1976, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, did execute and deliver an Easement and Right of Way to Brazos Electric Power Cooperative, Inc. of Waco, Texas, and South Texas Electric Cooperative, Inc. of Jourdan, Texas, covering 15.66 acres of land to be used as an erection site tract which was described in Exhibit 1 of said Easement, and a Right of Way over Haul Road A and Haul Road B, each being likewise described in said Exhibit 1, which Easement appears of record in Vol. 449, at pages 18-27 of the Deed Records of Atascosa County, Texas, to which reference is here made for all pertinent purposes; and,

WHEREAS, under date of March 23, 1977, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, did execute and deliver to the same aforementioned Grantees an Amended Easement No. 1, which amendment corrected the field note description to the 15.66 acre tract of land to be utilized as the erection site tract, which Amended Easement No. 1 appears of record in Vol. 520, at pages 32-35 of the Deed Records of Atascosa County, Texas; and,

WHEREAS, under date of February 4, 1980, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, did execute and deliver to SAN MIGUEL ELECTRIC COOPERATIVE, INC., as successor in interest of the original Grantees, an Amended Easement No. 2, which amendment was for the purpose of erecting and maintaining retention ponds for water accumulating adjacent to the properties covered under the aforementioned original Easement and Right of Way and Amendment thereto, which Amended Easement No. 2 appears of record in Vol. 520 at pages 36-52 of the Deed Records of Atascosa County, Texas; and,

WHEREAS, said SAN MIGUEL ELECTRIC COOPERATIVE, INC., has requested this Amended Easement No. 3 of ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER for the purpose of constructing and maintaining one (1) additional retention pond, and two (2) additional haulroad segments, to which the Grantors have agreed:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That we, ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, of the County of Atascosa and State of Texas, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars and other good and valuable consideration to us in hand paid by SAN MIGUEL ELECTRIC COOPERATIVE, INC., of Jourdan, Texas, the receipt and sufficiency of which is hereby acknowledged, have Amended, and do hereby Amend by this Amendment No. 3 to the aforementioned Easement and Right of Way and its Amendment No. 1 and Amendment No. 2 thereto so that the following described three (3) parcels of land will be included in the aforementioned Easement and Right of Way, to-wit:

The said three (3) additional parcels of real property and the associated easements granted thereon are more particularly described in the attached surveys which are identified as Easement 1, Field Notes for a 200 foot Width Haul Road Easement (12.13 acres), Easement 2, Field Notes for a 200 foot Width Haul Road Easement (27.90 acres) and Easement 3, Pond Easement, Field Notes for a 2.29 acre Water Retention Pond Easement. All of said real property

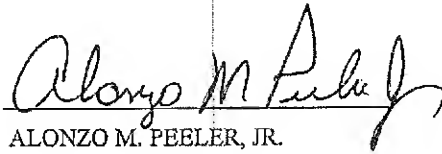
1. Laquita Hayden, County Clerk, Atascosa County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office, witness my hand and seal of office on this 1st day of February, 1980.


By Deputy: *[Signature]*

BOOK 163 PAGE 842
being located in Atascosa County, Texas. Said Survey descriptions are attached hereto and incorporated herein for all purposes and marked as Exhibits A, B, and C. Grantors herein do hereby Grant an Easement and Right of Way to SAN MIGUEL ELECTRIC COOPERATIVE, INC., of Jourdanton, Texas, on, over and across the aforementioned three (3) parcels of land which are hereby designated as two (2) additional haulroad segments to be used for the transportation of lignite, fuels and other materials necessary to the operation of Grantee's lignite-fired steam electric generating plant, and one (1) additional retention pond for the purpose of retaining water that accumulates thereon, and in accordance with all of the other terms and provisions of the original Easement and Amended Easement No. 1 and Amended Easement No. 2 hereinbefore referred to.

It is further understood and agreed that the roadways provided for under this Easement and Right of Way, as amended, shall not be open to the public, and that they will be used only for purposes reasonably necessary for the operation of Grantee's electric generating plant and mines in the vicinity, and that such roadways are to be used only by its employees or agents that might be engaged in the mining operations or the operations of such generating plant and provided however, that Grantors herein, their heirs or assigns, agents, servants, or employees, shall be entitled to use such roadways.

EXECUTED on this the 15 day of February, A.D., 2001.

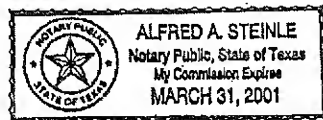

ALONZO M. PEELER, JR.

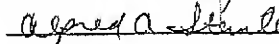

BARBARA GENE PEELER

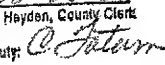
THE STATE OF TEXAS :
COUNTY OF ATASCOSA :

BEFORE ME, the undersigned authority, on this day personally appeared ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER, both known to me to be persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this 15 day of February, A.D., 2001.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

I, Laquita Hayden, County Clerk, Atascosa County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office witness my hand and seal of office on Feb 22-01
Laquita Hayden, County Clerk
By Deputy: 



D.G. Smyth & Co.

Statewide Land Surveying Service

GPS & Conventional
P.O. Box 637
Devine, Texas 78016



Ph: (830) 663-5432
Fax: (830) 663-2020

EASEMENT ONE

FIELD NOTES FOR A 200 FOOT WIDTH HAUL ROAD EASEMENT (12.13 ACRES)

Being a strip of land 200.00 feet in width lying in Atascosa County, Texas, out of and a part of W. A O. Wadsworth Abstract No. 889 and I. & G. N. RR. Co. Survey 1719, Abstract No. 470, and crossing portions of A. M. Peeler lands out of and a part of Dr. Charles F. Simmons 95,000 Acre Subdivision according to map thereof recorded in Volume 37 of the Deed Records of Atascosa County, Texas, more specifically crossing Block 153, Tract Nos. 2994, 2995, 2996, 2987, 2988, & 2989 of said subdivision, and also crossing that same certain tract called 199 acres as described in conveyance to A. M. Peeler and recorded in Volume 54, Page 117 of the Deed Records of Atascosa County, Texas, and being more particularly described by metes and bounds as follows: (The bearings, distances, and coordinates stated herein conform to the Texas Coordinate System North American Datum 1927, Texas South Central Zone.) (All corners called for as being set are marked on the ground by 1/2" diameter steel stakes with identification caps attached stamped "SMYTH/2046".)

BEGINNING at a steel stake set for the north corner of the herein described easement (S.P.C.: N = 329726.97', E = 2192549.65') on the southwest boundary of that same certain 5759.18 acre tract as described in Coal & Lignite Lease to San Miguel Electric Cooperative, Inc. and recorded in Volume 17, Page 340 of the Official Public Records of Atascosa County, Texas, and from which point the fence corner post marking the north corner of said 199 acre A. M. Peeler tract bears N 41° 18' 59" W at a distance of 5790.23 feet;

THENCE: S 41° 18' 59" E generally with the occupied fence and along the northeast boundary of said A. M. Peeler 199 acre tract for a distance of 200.00 feet to a steel stake set for the east corner of the herein described easement;

THENCE: S 48° 40' 05" W crossing said A. M. Peeler 199 acre tract and portions of said Dr. Charles F. Simmons Subdivision Block 153, Tract Nos. 2995, 2996, 2988, & 2989 for a total distance of 2527.76 feet to a steel stake set for the southeast corner of the herein described tract on the north line of said Dr. Charles F. Simmons Subdivision Block 153, Tract No. 2990;

Page One of Two

I, Lequita Hayden, County Clerk, Atascosa County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office, witness my hand and seal of office on 10-22-01



Lequita Hayden, County Clerk

By Deputy: *C. J. Jatum*

THENCE: S 89° 38' 01" W along the north line of said Subdivision Tract No. 2990 for a distance of 305.06 feet to a steel stake set for the west or southwest corner of the herein described tract;

THENCE: N 48° 40' 05" E crossing Dr. Charles F. Simmons Subdivision Block 153, Tract Nos. 2989, 2988, 2987, 2996, 2995, & 2994, and the aforesaid A. M. Peeler 199 acre tract for a total distance of 2758.17 feet to the **PLACE OF BEGINNING** and containing 12.13 acres of land within the herein described easement as surveyed by D. G. Smyth & Co. on October 16, 2000.

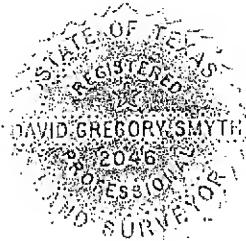


The State of Texas:
County of Medina:

It is hereby certified that the foregoing field note description and attached plat were prepared from an actual survey made by me on the ground and that same are true and correct according to said survey.

[Signature]

D. G. Smyth - Registered Professional Land
Surveyor Reg. No. 2046 #00-2422 E-1



I, Lequita Hayden, County Clerk, Atascosa
County, Texas, do hereby certify that this is a
true and correct copy as same appears of
recording in my office witness my hand and
seal of office on 11-22-01



Lequita Hayden, County Clerk
By Deputy *[Signature]*



A.C. Smyth & Co.

Statewide Land Surveying Service

GPS & Conventional
P.O. Box 637
Devine, Texas 78016



Ph: (830) 663-5432
Fax: (830) 663-2020

EASEMENT TWO

FIELD NOTES FOR A 200 FOOT WIDTH HAUL ROAD EASEMENT (27.90 ACRES)

Being a strip of land 200.00 feet in width lying in Atascosa County, Texas, out of and a part of W. A. O. Wadsworth Abstract No. 889 and James F. Pitman Abstract No. 680, and crossing portions of A. M. Peeler lands out of and a part of Dr. Charles F. Simmons 95,000 Acre Subdivision according to map thereof recorded in Volume 37 of the Deed Records of Atascosa County, Texas, more specifically crossing Block 153, Tract Nos. 2991 & 2992, Block 185, Tract Nos. 3454, 3455, 3469, 3470, 3468, 3467, 3483, 3484, 3482, 3481, 3496 & 3497, & Block 155, Tract Nos. 2981, 2980, & 2979 of said subdivision, and also crossing 30 foot width access roadways as provided for in said record subdivision plat or map, and being more particularly described by metes and bounds as follows: (The bearings, distances, and coordinates stated herein conform to the Texas Coordinate System North American Datum 1927, Texas South Central Zone.) (All corners called for as being set are marked on the ground by 1/2" diameter steel stakes with identification caps attached stamped "SMYTH/2046".)

COMMENCING at the intersection of the centerline of the herein described tract with the east or southeast margin of that same certain 300 foot width easement described of record in Volume 449, page 18-27 of the Deed Records of Atascosa County, Texas, and from which point the fence post marking the north corner of that same certain tract called 199 acres as described in conveyance to A. M. Peeler and recorded in Volume 54, Page 117 of the Deed Records of Atascosa County, Texas, bears N 48° 41' 01" E for a distance of 9153.05 feet to the northeast boundary of said 199 acre tract and N 41° 18' 59" W generally with the occupied fence and with said boundary line for a distance of 5790.23 feet;

THENCE: N 27° 56' 08" E along and with the east or southeast margin of said 300 foot width easement for a distance of 179.07 feet to a steel stake set for the **POINT OF BEGINNING** of the herein described easement (S.P.C.: N = 324229.33', E = 2185418.58'); .

THENCE: N 61° 53' 01" E crossing portions of said Dr. Charles F. Simmons Subdivision Block 185, Tract Nos. 3454, 3470, 3469, & 3468 for a total distance of 1780.71 feet to a steel stake set for a deflection point;

Page One of Two

I, Laquita Hayden, County Clerk, Atascosa County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office, witness my hand and seal of office on 02-28-07



Laquita Hayden, County Clerk

By Deputy: *C. J. Sutton*

THENCE: N 59° 54' 00" E crossing portions of said Subdivision Block 185, Tract Nos. 3468, 3467, 3483, and a 30 foot width subdivision road for a total distance of 894.60 feet to a steel stake set for a deflection point;

THENCE: N 48° 40' 05" E crossing portions of said Subdivision Block 185, Tract Nos. 3483, 3482, 3481, 3480, & 3496, Block 155, Tract Nos. 2981, 2980, & 2979, Block 153 Tract No. 2991, and two each 30 foot width subdivision roads for a total distance of 3114.71 feet to a steel stake set on the south line of said subdivision Block 153, Tract 2990;

THENCE: N 89° 38' 01" E with the south line of said Tract 2990 for a distance of 305.06 feet to a steel stake set for a corner;

THENCE: S 48° 40' 05" W crossing portions of said Charles F. Simmons Subdivision Block 153, Tract Nos. 2991 & 2992, Block 155, Tract Nos. 2980 & 2981, Block 185, Tract Nos. 3496, 3497, 3481, 3482, & 3483, and two each 30 foot width subdivision roads for a total distance of 3364.73 feet to a steel stake set for a deflection point;

THENCE: S 59° 54' 00" W crossing portions of said Subdivision Block 185, Tract Nos. 3483, 3484, 3468, & 3469 and a 30 foot width subdivision road for a total distance of 917.73 feet to a steel stake set for a deflection point;

THENCE: S 61° 53' 01" W crossing portions of said Subdivision Block 185, Tract Nos. 3469, 3470, 3454, & 3455 for a total distance of 2081.27 feet to a steel stake set on the east or southeast margin of the aforesaid 300 foot width easement described of record in Volume 449, Pages 18-27 of the Deed Records of Atascosa County, Texas;

THENCE: N 27° 56' 08" E along the east or southeast margin of said 300 foot width easement for a distance of 358.14 feet to the **PLACE OF BEGINNING** and containing 27.90 acres of land within the herein described easement as surveyed by D. G. Smyth & Co. on October 16, 2000.



The State of Texas:
County of Medina:

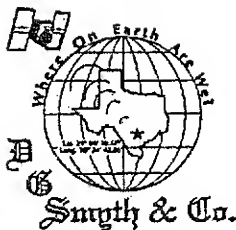
It is hereby certified that the foregoing field note description and attached plat were prepared from an actual survey made by me on the ground and that same are true and correct according to said survey.

DAVID GREGORY SMYTH
D. G. Smyth Registered Professional Land Surveyor Reg. No. 2046 #00-2422 E-2

I, Laquila Hayden, County Clerk, Atascosa County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office witness my hand and seal of office on Oct-25-01



By Deputy: *C. E. [Signature]*



H.C. Smyth & Co.

Statewide Land Surveying Service

GPS & Conventional
P.O. Box 637
Devine, Texas 78016



Ph: (830) 663-5432
Fax: (830) 663-2020

POND EASEMENT

FIELD NOTES FOR A 2.29 ACRE WATER RETENTION POND EASEMENT

Being 2.29 acres of land lying in Atascosa County, Texas, out of and a part of W. A. O. Wadsworth Abstract No. 889, and also being out of and a part of Block 185, Tract Nos. 3464, 3465, & 3466 of Dr. Charles F. Simmons 95,000 Acre Subdivision according to map thereof recorded in Volume 37 of the Deed Records of Atascosa County, Texas, and being more particularly described by metes and bounds as follows: (The bearings, distances, and coordinates stated herein conform to the Texas Coordinate System North American Datum 1927, Texas South Central Zone.) (All corners called for as being set are marked on the ground by 1/2" diameter steel stakes with identification caps attached stamped "SMYTH/2046".)

BEGINNING at a steel stake set for the north corner of the herein described easement (S.P.C.: N = 326258.12', E = 2186480.54') on the eastern margin of that same 300 foot width haul road easement described of record in Volume 449, Pages 18-27 of the Deed Records of Atascosa County, Texas, and from which point the fence corner post marking the north corner of that same certain tract called 199 acres as described in conveyance to A. M. Peeler and recorded in Volume 54, Page 117 of the Deed Records of Atascosa County, Texas, bears N 48° 41' 01" E for a distance of 6848.55 feet to the northeast boundary of said 199 acre tract and N 41° 18' 59" W generally with the occupied fence and with said boundary line for a distance of 4288.66 feet;

THENCE: S 62° 05' 11" E for a distance of 209.50 feet to a steel stake set for the east corner of the herein described tract;

THENCE: S 27° 54' 49" W for a distance of 500.00 feet to a steel stake set for the south corner of the herein described tract;

THENCE: N 62° 05' 11" W for a distance of 200.00 feet to a steel stake set for the west corner of the herein described tract on the east margin of the aforesaid 300 foot width haul road easement;

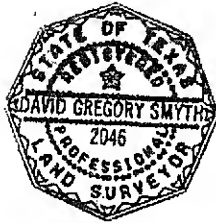
Page One of Two

I, Laquita Hayden, County Clerk, Atascosa County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office witness my hand and seal of office on 11-22-01
Laquita Hayden, County Clerk
By Deputy: *[Signature]*



THENCE: N 27° 54' 49" E along the east margin of said easement for a distance of 288.13 feet to the beginning of a curve to the left whose radius is 1840.55 feet, include angle = 06° 36' 37", and tangent length = 106.29';

THENCE: Northeasterly, continuing with the east margin of said haul road easement with said curve deflecting uniformly and continuously to the left for an arc distance of 212.35 feet (Long Chord = N 24° 37' 49" E, 212.23') to the **PLACE OF BEGINNING** and containing 2.29 acres of land within the herein described easement as surveyed by D. G. Smyth & Co. on October 16, 2000.



The State of Texas:
County of Medina:

It is hereby certified that the foregoing field note description and attached plat were prepared from an actual survey made by me on the ground and that same are true and correct according to said survey.

D. G. Smyth

D. G. Smyth - Registered Professional Land Surveyor
Reg. No. 2046 #00-2422 pond

STATE OF TEXAS COUNTY OF ATASCOSA

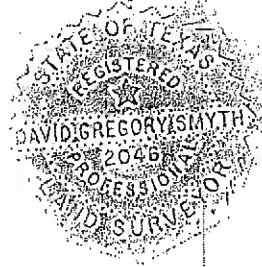
I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the OPR records of Atascosa County, Texas stamped hereon by me:



RECORDING DATE
FEB 21 2001
LAQUITA HAYDEN

COUNTY CLERK Atascosa County, Texas

By B. Jueno Deputy



Ret to: San Miguel Elec. Coop
P.O. Box 280
Jourdanton, Tex 78024.

I, Laquita Hayden, County Clerk, Atascosa County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office witness my hand and seal of office on 2-21-01



Laquita Hayden, County Clerk

By Deputy: A. Hartman

O

Alonzo M. Peeler, Jr. et ux to San Miguel Electric Cooperative, Inc.

MEMORANDUM GIVING NOTICE OF A FLOOD EASEMENT

THE STATE OF TEXAS

COUNTY OF ATASCOSA

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§
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KNOW ALL MEN BY THESE PRESENTS:

THIS Memorandum Giving Notice Of A Flood Easement is made and entered into effective the 1st day of January, 1994, between ALONZO M. PEELER, JR. AND WIFE, BARBARA GENE PEELER, whose address is, for the purpose hereof, P.O. Box 423, Jourdan, Texas 78026, hereinafter called "Lessor", and SAN MIGUEL ELECTRIC COOPERATIVE, INC., whose address is P.O. Box 280, Jourdan, Texas 78026, hereafter called "Lessee":

NOW, THEREFORE, WITNESSETH:

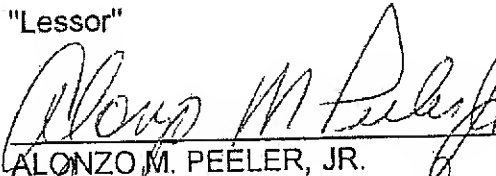
1. Lessor and Lessee have made and entered into a Flood Easement of even date herewith under the terms of which Lessor has leased and let to Lessee for temporary flood purposes the following described lands situated in Atascosa County, Texas, to-wit:

See Exhibit "A" which is incorporated herein for all purposes.

2. This Memorandum Giving Notice of Flood Easement is executed and filed for record in Atascosa County, Texas, only for the purpose of affording notice of the existence of such Flood Easement, and does not in any way enlarge or diminish the rights of either party to such Flood Easement.

IN WITNESS WHEREOF, this instrument is executed effective as of the date first shown above.

"Lessor"


ALONZO M. PEELER, JR.


BARBARA GENE PEELER

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2

"Lessee"

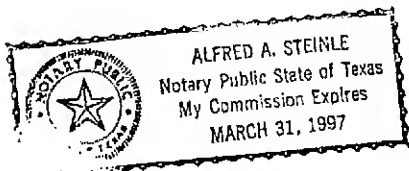
SAN MIGUEL ELECTRIC COOPERATIVE,
INC.

By: Mac A. Coalson
Printed Name: Mac A. Coalson
Title: President

THE STATE OF TEXAS §

COUNTY OF ATASCOSA §

THIS INSTRUMENT was acknowledged before me on the 16th day of December, 1993, by ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER.



Alfred A. Steinle
Notary Public in and for
the State of Texas

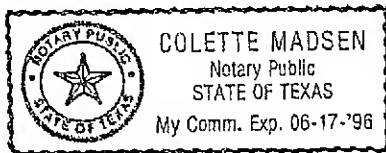
BOOK

1 PAGE 607

THE STATE OF TEXAS §

COUNTY OF HARRIS §

THIS INSTRUMENT was acknowledged before me on the 29th day of December, 1993, by MAC A. COALSON, President of SAN MIGUEL ELECTRIC COOPERATIVE, INC., a Texas corporation, on behalf of said corporation.



Colette Madsen
Notary Public in and for
the State of Texas

EXHIBIT "A"

AREA 1: Being out of Simmons Subdivision Farm Tract Numbers 3879, 3880, 3881, 3895, 3896 and 3897, in the Dr. Charles F. Simmons' 95,000 acre Subdivision, as per map or plat of said Subdivision appearing of record in Vol. 37 of the Deed Records of Atascosa County, Texas, to-wit:

Point of beginning starting at a point near the southern boundary of Tract 3881 defined by the state plane coordinates 2,178,992.9E, 319,663.2N, along a line traveling northward 849.6 feet through Tract 3880 into the central portion of Tract 3879 defined by the state plane coordinates 2,178,870.5E, 320,503.9N.

Thence in an easterly direction into the eastern portion of Tract 3895, 1,649.6 feet to a point defined by state plane coordinates 2,180,520.1E, 320,509.7N.

Thence in a southerly direction crossing into Tract 3896 near the northeastern corner, 328.5 feet to a point defined by state plane coordinates 2,180,643.1E, 320,205.0N.

Thence in a westerly arc 1,736.9 feet to the point of beginning.

The said Area 1 is 18.9 acres, more or less.

Area 2: Being out of Simmons Subdivision Farm Tract Numbers 2884, 2885, 2886, 2900, 2901, 2902, 2918, 3373, 3374, 3375, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3416, 3417, 3418, 3419, 3420, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3439, 3440, 3441, 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, in the Dr. Charles F. Simmons' 95,000 acre Subdivision, as per map or plat of said Subdivision appearing of record in Vol. 37 of the Deed Records of Atascosa County, Texas, to-wit:

Point of beginning starting at a point on the eastern boundary of Tract 3441 and defined by state plane coordinates 2,184,633.8E, 323,353.1N, traveling in a northwesterly direction 534.6 feet to a point in Tract 3440 defined by state plane coordinates 2,184,430.7E, 323,847.6N.

Thence in a west north west direction 649.9 feet into the south central portion of Tract 3439 to a point defined by state plane coordinates 2,183,809.6E, 324,038.9N.

Thence in a southwesterly direction 226.3 feet crossing into Tract 3440 to a point defined by state plane coordinates 2,183,643.2E, 323,885.6N.

Thence in a northwesterly direction 347.6 feet crossing into Tract 3439 to a point on the western boundary defined by state plane coordinates 2,183,327.0E, 324,030.1N.

Thence in a northeasterly direction 1,312.0 feet crossing Tracts 3439, 3438, 3437 and into the north central portion of Tract 3436 to a point defined by state plane coordinates 2,183,804.4E, 325,252.2N.

Thence in a northwesterly direction 1,581.1 feet crossing Tracts 3435 and 3419 into the southwestern portion of Tract 3418 to a point defined by state plane coordinates 2,181,275.7E, 325,655.6N.

Thence in a southwesterly direction 1,867.7 feet crossing Tracts 3419, 3420, 3404, 3405 and 3406 to a point centrally located in Tract 3407 defined by state plane coordinates 2,181,319.3E, 324,051.4N.

Thence in an easterly direction 1,377.5 feet crossing into Tract 2391 to a point on the southern boundary defined by state plane coordinates 2,179,943.2E, 323,989.9N.

Thence in a northeasterly direction 1,096.5 feet crossing Tract 2375 into a point in Tract 2374 defined by state plane coordinates 2,178,915.9E, 324,373.4N.

Thence in a northeasterly direction 4,088.0 feet crossing Tracts 2374, 2373, 2389, 2388, 2387, 2386, 2385, 2384, 2400, 2886 and 2885 into a point in the central portion of Tract 2884 defined by state plane coordinates 2,181,522.2E, 327,522.9N.

Thence in a southeasterly direction 4,721.0 feet crossing Tracts 2884, 2900, 2901, 2902, 2918, 3432, 3433 and 3449 to a point in the east central portion of Tract 3450 defined by state plane coordinates 2,185,889.9E, 325,731.0N.

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FILED FOR RECORD

94 JAN 11 PM 4:38

LAQUITA HAYDEN
ATASCOSA COUNTY CLERK

LAQUITA HAYDEN
DEPUTY
pd 13.00

*Ret 20
Marshall Stanley
San Miguel
P.O. Box 280
Gardnerville, NV 7826*

STATE OF TEXAS COUNTY OF ATASCOSA

I hereby certify that this instrument was filed on the
date and time stamped herein by me and was duly
recorded in the volume and page of the OPB
records of Atascosa County, Texas stamped herein
by me: RECORDING DATE

Jan 13 1994
LAQUITA HAYDEN

COUNTY CLERK Atascosa County, Texas

By *C. Sutton* Deputy

BOOK 1 PAGE 610
Thence in a southwesterly direction 2,689.3 feet crossing Tracts 3450, 3451,
3452, 3453, 3454, 3455, 3456 and 3457 into Tract 3441 to the Point of Beginning.
The said Area 2 contains 299.8 acres, more or less.

18.9
3187

P

EASEMENT

THE STATE OF TEXAS
COUNTY OF ATASCOSA

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KNOW ALL MEN BY THESE PRESENTS:

THAT ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER (hereinafter called "Grantor"), for and in consideration of the payment by San Miguel Electric Cooperative Co. (hereinafter called "Grantee") of the Easement Fee (hereinafter defined) to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Grantee the following easements:

(1) An easement to flood, inundate, submerge and overflow at all times and from time to time all of that certain real property described on Exhibit "A" attached hereto and incorporated herein for all purposes (the "Flood Area"); and

(2) An access easement in, on, over, under, across and to the Flood Area for purposes of (i) ingress and egress and so that Grantee may, from time to time, and at such times as Grantee may elect, conduct certain base line studies, including, without limitation, soils, fish and wildlife, archeological and environmental base line studies, as well as perform such excavation work as may be necessary or desirable, as determined by Grantee, in connection with such base line studies, (ii) ingress and egress and so that Grantee may perform any permitted or required maintenance or repairs hereunder within the Flood Area, and (iii) ingress and egress so that Grantee may construct, inspect and maintain such boundary markers as may be required by the Railroad Commission of Texas or deemed advisable by Grantee.

Said easements (herein the "Easements") being hereby granted for the benefit of certain real property (the "Benefitted Estate") in which Grantee has a fee title interest, and is more particularly described on Exhibit "B" attached hereto and incorporated herein for all purposes. For purposes hereof, the Flood Area is herein called the "Easement Area".

TO HAVE AND TO HOLD the above described Easements, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors and assigns for as long as Grantee utilizes the bridge across La Parita Creek that is located on the real property owned by Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler, and which is commonly known by Grantor and Grantee as the La Parita Creek Bridge, at such time as Grantee or its

successors or assigns permanently abandons its use of said bridge in its operations, this Easement shall automatically terminate; and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Easements unto the said Grantee, and its respective successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through and under Grantor, but not otherwise.

On the 1st day of January, 1994 and each year thereafter, Grantee shall pay to Grantor an annual easement fee (the "Easement Fee") in an amount equal to Ten and No/100 Dollars (\$10.00) per acre of land situated in the Easement Area.

The Easements are granted, subject to all encumbrances and other matters (i) of record in the county or counties where the Easement Area is located, and/or (ii) visible and that a correct on the ground survey would reveal, to the full extent the same exist and affect the Easements herein granted.

Grantee agrees to comply at all times and at its sole cost with all applicable federal, state and local laws, rules, regulations and safety standards in connection with Grantee's activities hereunder.

Grantor expressly reserves unto itself and Grantor's heirs, executors, administrators, successors and assigns, the right to use and enjoy the land covered by the Easement Area for any purposes whatsoever, except insofar as said use and enjoyment unreasonably interferes with the rights hereby granted to Grantee.

All persons entering upon the Easement Area under this grant shall confine themselves to the operations and purposes contemplated herein and no trespassing, hunting, fishing or other uses shall be permitted by Grantee, its employees, agents or contractors.

Grantor reserves all of its present interest in and to all oil, gas and other minerals in, on or under the Easement Area. In no event shall Grantee be liable to Grantor or Grantor's heirs, assigns, licensees, invitees, lessees, employees or agents for any costs, claims, liability, damage (whether to person or property), or causes of action caused in whole or part or related to falling, rising or flowing water, including but not limited to flooding, inundation or overflow that may arise out of or that may be in any way associated with the exploration, development or production of oil, gas or other minerals in the Easement Area or any operations associated therewith within the Easement Area.

In the event of any unreasonable interference or threatened unreasonable interference with the Easements or easement rights herein granted or with the other rights and obligations of the parties hereunder, the Easements and such rights and obligations may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting such interference and commanding

compliance with the provisions hereof, which restraining orders and injunctions shall be obtainable upon proof of the existence of such interference or threatened interference, and without the necessity of proof of inadequacy of legal remedies or irreparable harm, and shall be obtainable only by one or more persons or parties signing this agreement or that are benefited hereby; provided, however, nothing herein shall be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

Grantee is signing below to evidence its acceptance of and agreement to all of the terms and provisions hereof.

It is understood and agreed that this agreement is an easement only and in no way grants or conveys any part of the underlying fee simple estate of any lands owned by Grantor.

Recognizing that the parties hereto may find it necessary from time to time to establish to lenders, mortgagees, accountants, or other parties of the then current status of performance hereunder, each party bound or benefited by this agreement agrees, upon written request, that it will from time to time, with reasonable promptness, furnish a written statement in recordable form on the status of any matter relating to this agreement.

Any notice provided or permitted to be given in this agreement must be in writing and may be given by depositing the notice in the United States mail, postage prepaid, certified or registered, with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the foregoing manner shall be deemed received three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when actually received by the party to be notified. For purposes of notice the addresses of the parties shall be as follows until changed as herein provided:

Grantor: Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler
P.O. Box 423
Jourdanton, Tx 78026

Grantee: San Miguel Electric Cooperative, Inc.
P. O. Box 280
Jourdanton, Texas 78026
Attention: Mr. Marshall Darby

Either party, by notifying the other party hereto in the manner provided in this paragraph, may designate a different address for receipt of subsequent notices.

Except as to S.S. Farm Tract Nos. 2886, 3416 and 3440, the persons and officers signing below on behalf of Grantor or Grantee personally represent and warrant that Grantor or Grantee, as the case may be, has full right and authority to execute this agreement, that the person signing below on behalf of Grantor or Grantee was authorized to do so and that the Board of Directors or other governing body of Grantor or Grantee, if any, has adopted resolutions so certifying.


~~As to S.S. Farm Tract Nos. 2886, 3416 and 3440, Grantors personally~~ represent that they have been in continuous possession of said land for over twenty-five (25) years and have claimed and used said land openly and notoriously during said period by maintaining their ranching operations thereon under fence and locked gates.

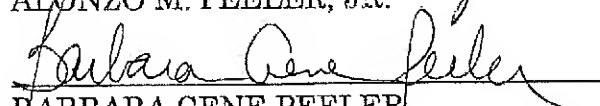
This agreement and all of the terms, provisions and obligations hereof shall be covenants running with the land affected thereby and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective heirs, executors, administrators, successors and assigns. Grantee's rights hereunder may also be exercised, at Grantee's option, by Grantee's lessees, contractors, employees, agents, guests and invitees.

This agreement may be executed in multiple counterparts all of which taken together shall constitute a single agreement with the same force and effect as if all parties had signed the same copy of this agreement.

This agreement shall not be binding or effective on any party until executed and acknowledged by all signatories listed below and the first annual easement fee has been paid by Grantee. Executed on the respective dates of the acknowledgments of the parties as set forth below.

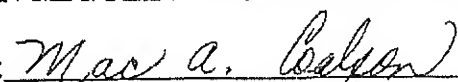
"Grantor"


ALONZO M. PEELER, JR.


BARBARA GENE PEELER

"Grantee"

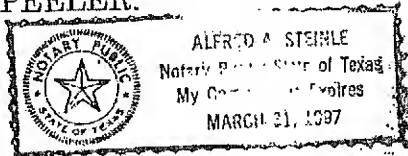
SAN MIGUEL ELECTRIC COOPERATIVE, INC.

By: 
Printed Name: Mac A. Coalson
Title: President

THE STATE OF TEXAS §

COUNTY OF ATASCOSA §

THIS INSTRUMENT was acknowledged before me on the 16th day of DECEMBER, 1993, by ALONZO M. PEELER, JR. and wife, BARBARA GENE PEELER.

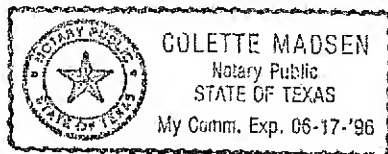


Alberto A. Steinle
Notary Public in and for
the State of Texas

THE STATE OF TEXAS §

COUNTY OF HARRIS §

THIS INSTRUMENT was acknowledged before me on the 29th day of December, 1993, by MAC A. COALSON, President of SAN MIGUEL ELECTRIC COOPERATIVE, INC., a Texas corporation, on behalf of said corporation.



Colette Madsen
Notary Public in and for
the State of Texas

EXHIBIT "A"

AREA 1: Being out of Simmons Subdivision Farm Tract Numbers 3879, 3880, 3881, 3895, 3896 and 3897, in the Dr. Charles F. Simmons' 95,000 acre Subdivision, as per map or plat of said Subdivision appearing of record in Vol. 37 of the Deed Records of Atascosa County, Texas, to-wit:

Point of beginning starting at a point near the southern boundary of Tract 3881 defined by the state plane coordinates 2,178,992.9E, 319,663.2N, along a line traveling northward 849.6 feet through Tract 3880 into the central portion of Tract 3879 defined by the state plane coordinates 2,178,870.5E, 320,503.9N.

Thence in an easterly direction into the eastern portion of Tract 3895, 1,649.6 feet to a point defined by state plane coordinates 2,180,520.1E, 320,509.7N.

Thence in a southerly direction crossing into Tract 3896 near the northeastern corner, 328.5 feet to a point defined by state plane coordinates 2,180,643.1E, 320,205.0N.

Thence in a westerly arc 1,736.9 feet to the point of beginning.

The said Area 1 is 18.9 acres, more or less.

Area 2: Being out of Simmons Subdivision Farm Tract Numbers 2884, 2885, 2886, 2900, 2901, 2902, 2918, 3373, 3374, 3375, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3416, 3417, 3418, 3419, 3420, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3439, 3440, 3441, 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, in the Dr. Charles F. Simmons' 95,000 acre Subdivision, as per map or plat of said Subdivision appearing of record in Vol. 37 of the Deed Records of Atascosa County, Texas, to-wit:

Point of beginning starting at a point on the eastern boundary of Tract 3441 and defined by state plane coordinates 2,184,633.8E, 323,353.1N, traveling in a northwesterly direction 534.6 feet to a point in Tract 3440 defined by state plane coordinates 2,184,430.7E, 323,847.6N.

Thence in a west north west direction 649.9 feet into the south central portion of Tract 3439 to a point defined by state plane coordinates 2,183,809.6E, 324,038.9N.

Thence in a southwesterly direction 226.3 feet crossing into Tract 3440 to a point defined by state plane coordinates 2,183,643.2E, 323,885.6N.

Thence in a northwesterly direction 347.6 feet crossing into Tract 3439 to a point on the western boundary defined by state plane coordinates 2,183,327.0E, 324,030.1N.

Thence in a northeasterly direction 1,312.0 feet crossing Tracts 3439, 3438, 3437 and into the north central portion of Tract 3436 to a point defined by state plane coordinates 2,183,804.4E, 325,252.2N.

Thence in a northwesterly direction 1,581.1 feet crossing Tracts 3435 and 3419 into the southwestern portion of Tract 3418 to a point defined by state plane coordinates 2,181,275.7E, 325,655.6N.

Thence in a southwesterly direction 1,867.7 feet crossing Tracts 3419, 3420, 3404, 3405 and 3406 to a point centrally located in Tract 3407 defined by state plane coordinates 2,181,319.3E, 324,051.4N.

Thence in an easterly direction 1,377.5 feet crossing into Tract 2391 to a point on the southern boundary defined by state plane coordinates 2,179,943.2E, 323,989.9N.

Thence in a northeasterly direction 1,096.5 feet crossing Tract 2375 into a point in Tract 2374 defined by state plane coordinates 2,178,915.9E, 324,373.4N.

Thence in a northeasterly direction 4,088.0 feet crossing Tracts 2374, 2373, 2389, 2388, 2387, 2386, 2385, 2384, 2400, 2886 and 2885 into a point in the central portion of Tract 2884 defined by state plane coordinates 2,181,522.2E, 327,522.9N.

Thence in a southeasterly direction 4,721.0 feet crossing Tracts 2884, 2900, 2901, 2902, 2918, 3432, 3433 and 3449 to a point in the east central portion of Tract 3450 defined by state plane coordinates 2,185,889.9E, 325,731.0N.

Thence in a southwesterly direction 2,689.3 feet crossing Tracts 3450, 3451, 3452, 3453, 3454, 3455, 3456 and 3457 into Tract 3441 to the Point of Beginning.

The said Area 2 contains 299.8 acres, more or less.

EXHIBIT "B"

All of the hereinafter described properties are out of the Dr. Chas. F. Simmons 95,000 acre Subdivision in Atascosa County, Texas, as per map or plat of said Subdivision of record in Volume 37 of the D/R of Atascosa County, Texas.

Being 334.56 acres of land described as being all of S.S. Farm Tract Numbers 3742, 3743, 3744, 3745, 3746, 3747, 3748, 3758, 3759, 3760, 3761, 3762, 3763, 3764, 3778, 3779, 3780, 3794, 3795, 3796, 4177, 4178, 4179, 4193, 4194, 4195, 4780, 4781, 4782, 4796, 4797 and 4798, containing ten (10) acres of land each, and the West 600 feet of S.S. Farm Tract Numbers 3776 and 3777, containing 4.54 acres each, and those certain thirty (30') foot strips of land indicated as roadways within the confines of the outside perimeter of the hereinbefore described S.S. Farm Tracts, more particularly described as being that certain 30 foot strip lying immediately East of and adjacent to S.S. Farm Tract Numbers 3760, 3761, 3762, 3763, 3764, 4193, 4194, and 4195, and that certain 30 foot strip lying immediately North of and adjacent to S.S. Farm Tract Nos. 4177, 4193, 4780, 4796, and containing within said roadways 5.475 acres, more or less, and which 334.56 acres, more or less, are more particularly described by metes and bounds as follows:

BEGINNING at a 1-1/2 inch galvanized iron pipe, marked #I, set for the northwest corner of a 10 acre tract known and described in Vol. 37, of the D/R of Atascosa County, Texas, as Farm Tract No. 3742 of the Dr. Chas. F. Simmons 95,000 acre Subdivision in Atascosa County, Texas;

THENCE East along the North line of Farm Tract Nos. 3742 and 3758, a distance of 2640 feet to a 1-1/2" G.I.P., marked #II set for the Northeast corner of Farm Tract No. 3758 of said Simmons Subdivision;

THENCE South along the East line of Farm Tract Nos. 3758 and 3759 of said Subdivision, 660 feet to a 1-1/2" G.I.P. marked #III, set for the Southeast corner of said Farm Tract No. 3759;

THENCE East at 30 feet pass the Northwest corner of Farm Tract No. 3776, continuing along the North line of said Survey 3776, a distance of 630 feet to a 1-1/2" G.I.P. marked #IV, set for the Northeast corner of the West 600 feet of said Farm Tract No. 3776;

THENCE South along the East line of the West 600 feet of Farm Tract Nos. 3776 and 3777, a distance of 660 feet to a 1-1/2" G.I.P. marked #V set in the North line of Farm Tract No. 3778;

THENCE East along the North line of Farm Tract Nos. 3778 and 3794, a distance of 2040 feet to a 1-1/2" G.I.P. marked #VI, set for the Northeast corner of said Farm Tract No. 3794;

THENCE South along the East line of Farm Tract Nos. 3794, 3795, and 3796, a distance of 1020 feet to a 1-1/2" G.I.P. marked #VII set for the Northeast corner of Farm Tract No. 4796;

THENCE West along the South line of Farm Tract Nos. 4798, 4782, 4195, and 4179, a distance of 5310 feet to a 1-1/2" G.I.P. marked # IX, set for the Southwest corner of Farm Tract No. 4179;

THENCE North along the West line of Farm Tract Nos. 4179, 4178, and 4177, a distance of 990 feet to a 1-1/2" G.I.P. marked # X, set for the Northwest corner of Farm Tract No. 4177;

THENCE North along the West line of Farm Tract Nos. 3748, 3747, 3746, 3745, 3744, 3743, and 3742, a distance of 2340 feet to the place of Beginning, as surveyed by M.J. Stalcup, Registered Public Surveyor of Lubbock County, Texas.

Q

LEASE AGREEMENT

THE STATE OF TEXAS }
COUNTY OF ATASCOSA } KNOW ALL MEN BY THESE PRESENTS: That,

WHEREAS, Brazos Electric Power Cooperative, Inc., of Waco, Texas, and South Texas Electric Cooperative, Inc., of Victoria, Texas, acting jointly, have heretofore purchased 330 acres out of the Dr. Chas. F. Simmons 95,000 acre sub-division, in Atascosa County, Texas, by Deed dated the 24th day of November, 1975, executed by Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler, to which reference is heremade for a more full and complete description of such property for all purposes of this Lease Agreement; and,

WHEREAS, said Cooperatives do desire and intend to construct and operate a lignite fired steam electric generating plant on such 330 acre tract of land; and,

WHEREAS, the above named sellers of such 330 acre tract of land own additional land surrounding such plant site and are acting herein as Lessors; and,

WHEREAS, the hereinafter named Lessors and Lessees do desire to provide for and establish a buffer zone surrounding such plant site separating such plant site from other land owned by the Lessors herein for the purpose of making provision for any emissions, noise, light or other pollutants which may hereafter emanate from such lignite-fired steam electric generating plant to be located on such plant site;

NOW THEREFORE, this Lease Agreement is made and entered into this 23rd day of September, 1975, by and between Alonzo M. Peeler, Jr. and wife, Barbara Gene Peeler, hereinafter referred to as "Lessors", and Brazos Electric Power Cooperative, Inc., of Waco, Texas, and South Texas Electric Cooperative, Inc., of Victoria, Texas, both Texas Corporations acting

herein jointly and hereinafter referred to as "Lessees".

ARTICLE I.

DEMISE OF LEASED PREMISES

Lessors, for and in consideration of the rents, covenants and agreements herein contained, to be kept, performed and observed by Lessees, do hereby lease and demise to Lessees, and Lessees do hereby rent and accept from Lessors, that certain real property referred to herein as the leased premises, and more particularly described in Exhibit A attached hereto and made a part hereof.

To have and to hold the leased premises together with all rights, privileges, appurtenances and immunities belonging to or in any way appertaining to said leased premises in accordance with the terms and conditions of this agreement.

ARTICLE II.

RESERVATIONS

It is specifically understood and agreed by and between the parties hereto that Lessors reserve unto themselves, their heirs and assigns:

(1) all hunting and fishing rights on the leased premises except that optioners will not permit any hunting on such leased premises by persons other than optioners or their children;

(2) the right to execute oil, gas and mineral leases including lignite^{uranium} or other hard minerals on the leased premises, except that there shall be no surface mining exploration operations which would interfere in any way with the operations of the

- optionees' electric generating plant referred to above; and
- (3) all rights to raise livestock thereon and for general farming purposes; and
 - (4) All rights to the presently existing water well, equipment thereon and water line appurtenant thereto on the leased premises, together with rights to maintenance thereof; and
 - (5) the right to take and remove caliche from the leased premises;

all of which reservations are subject, however, to the following terms and conditions:

A. Lessors understand and agree that such leased premises are to provide a buffer zone, as described above, which is necessary and incidental to the operation of Lessees' lignite fired steam electric generating plant located upon the above referred to 330 acre tract of land and surrounded by such leased premises, and that any persons, property, cattle, horses or any other livestock on the leased premises may be in danger of injury or destruction from whatever causes occasioned by the operation of such power plant. The Lessors, therefore, accept this reservation, subject to their own risk and subject to such dangers.

In the event that the existing water well located on the leased premises and presently furnishing water for Lessor's ranch house is contaminated by action of the Lessors hereunder, Lessees will furnish an alternate source of such water.

B. A material consideration of the making of this lease subject to the rights and interests in the leased premises retained herein by the Lessors, without which such reservation would not have been agreed to by the Lessees, is that the Lessors assume all risk of personal injury and damage to themselves, their employees, livestock, wildlife or property of any kind which may be on the leased premises pursuant to this reservation and all such persons which may be within the leased premises with the consent of the Lessors caused by, incident to, or arising out of, operations of such power plant.

Provided however, that optionees shall use reasonable diligence to comply with all present Federal and State regulations and standards for the design, construction and operation of said steam electric generating plant and fuel supply on the plant site including those for protection of the environment. Pursuant to the assumption of risk in this paragraph, Lessors, for themselves, their heirs and assigns, release and shall save and hold harmless the Lessees from all such damage, claims and losses occurring on the leased premises in connection with this reservation, except those arising out of acts of the Lessees, which may be willful or intentional, or in failing to use reasonable diligence as above provided for in this paragraph.

ARTICLE III.

RELEASES

As provided herein, the leased premises are to be used by the Lessees in connection with and incidental to the location, construction and operation of a lignite-fired steam electric generating plant on that certain 330 acre tract of land referred to above for the purpose of providing a buffer zone between such plant site and other property owned by Lessors. The annual lease payment to Lessors is in lieu of any damages or loss which Lessors might suffer to persons, property or plant or animal life within the leased premises adjoining such plant site by reason of the construction and operation by Lessees of that certain steam electric generating plant referred to above. Therefore, Lessors, for themselves, their heirs, executors, administrators or assigns, do hereby release and discharge Lessees of and from all claims, demands, injuries, losses or damage which they may have or which may accrue to them in the future during the operation of such steam electric generating plant resulting from:

- A. Emission of dust from such plant site;

B. Noise from such plant site;

C. Any moisture or water spray that may be emitted from the plant site or any cooling towers located thereon, including any SO² scrubbers installed on such plant site;

D. Any air pollutants emitting from such plant site, specifically including, without limitation, any particulate matter, SO² or NO_x;

E. Lights from the plant site.

ARTICLE IV.

LEASE TERM

This lease shall be for a term of fifty (50) years or until such time as the above referred to lignite fired steam electric generating plant, to be constructed and operated upon that certain 330 acre tract of land surrounded by the leased premises, is abandoned by Lessees or their successors or assigns, whichever period of time is longer.

ARTICLE V.

RENT

Lessees agree to pay to Lessors as rental for the use and occupancy of the leased premises under this lease, the sum of \$4.00 per acre for each acre of the leased premises, payable in advance in annual payments, with the first such payment to become due and payable on or before the 1st day of December, 1975, with a like payment to become due or payable on or before the 1st day of December of each succeeding year thereafter during the term of this lease.

ARTICLE VI.

PAYMENT OF RENT

All annual installments of rent due and payable hereunder shall be paid at the time due, to the Jourdanton State Bank at Jourdanton, Texas, for the account of Lessors, unless and until

Lessor's notify Lessee in writing some other bank.

ARTICLE VII.

TAXES

In addition to the rental payment, Lessee shall pay to Lessor annually an amount of money equal to the taxes which may be levied on or assessed against the land within the leased premises. In connection with this payment, Lessor must submit a photocopy of the tax statement for all ad valorem taxes assessed against the leased premises for the specific year of the lease and such photocopies of the tax statements must be mailed to the Lessee at their address, as hereinafter set out, on or before the 15th day of November of each year during the term of this lease and such supplemental rental payment for taxes shall thereafter be payable by Lessee to Lessor within thirty (30) days after receipt of the copies of the tax statements by Lessee for the tax year during the lease term in question.

In the event that Lessor do not provide copies of the tax statements to the Lessee within the prescribed time, this does not eliminate the necessity of making the supplemental rental payments by Lessee to Lessor, but any such supplemental rental payment shall not be due the Lessor until thirty (30) days after receipt of the copies of such tax statements by Lessee showing the amount due hereunder.

All such rental payments for taxes shall be payable in accordance with the provisions of Article VI above.

ARTICLE VIII.

PERMANENT LAND DAMAGE

In the event that there is any permanent damage to the

leased premises by virtue of any spills or any other contamination originating from the operations conducted by Lessees on the plant site or other operations in connection therewith, the Lessors herein shall be compensated by the Lessees for the reasonable market value of the land which is permanently damaged. In the event, however, that permanent damage to the Lessors' land occurs for any reason excused by force majeure, the Lessees shall not be liable for the payment of such damages to the leased land, but they shall be obligated to do what they can to minimize the damage to Lessors' land, if such damage by force majeure is coupled with contaminants or spills or debris originating from Lessees' plant site or other operations.

ARTICLE IX.

ENCUMBRANCE OF LEASEHOLD ESTATE

Lessees may, at any time, and from time to time, encumber the leasehold interest by Deed of Trust, mortgage or other security instrument, without obtaining the consent of Lessor, but no such encumbrance shall constitute a lien on the fee title of Lessors. The indebtedness secured thereby shall, at all times, be, and remain inferior and subordinate to all of the conditions, covenants and obligations of this lease, to all the rights of the Lessors hereunder. In this connection, any lender on the security of the leasehold estate shall have the right, at any time during the term of this lease, to do any act or thing required of Lessees hereunder, and all such acts or things done and performed shall be as effective to prevent a forfeiture of Lessees' rights hereunder as if done by the Lessees.

ARTICLE X.

ASSIGNMENT AND SUBLEASE

Lessees may sell or assign their leasehold estate in its entirety or any portion of the unexpired term thereof, or may sub-

let the leased premises or any portion of same at any time, and from time to time, the rights of Lessees or any successor or assignee of Lessees may pass by operation of law. It is agreed, however, that each such transfer, assignment and sale shall be subject to the obligations to Lessors as set forth in this instrument, and shall not release Lessees of their obligations hereunder.

ARTICLE XI.

WARRANTIES

Lessors warrant that they own all of the leased premises in fee simple title and have a full complete and unrestricted right to make this lease, subject only to the exceptions set out on Exhibit A attached hereto. Lessors further covenant and agree with Lessee on paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this lease on Lessees' part to be kept or performed, Lessees shall lawfully and quietly hold, occupy and enjoy the leased premises during the term of this lease without hinderance or molestation of Lessors or any person claiming under the Lessors.

ARTICLE XII.

NO TERMINATION ON BANKRUPTCY

Neither bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver shall affect this lease so long as all covenants of the Lessees or Lessors are continued in performance by Lessees or Lessors, and their respective successors or legal representatives.

If more than one Lessee or Lessor is named under this lease, the obligation of all such lessees or lessors shall be, and is, joint and several.

ARTICLE XIII.

RELATIONSHIP OF PARTIES

The relationship between Lessors and Lessees, at all

time, shall remain solely that of landlord and tenant and not be deemed partnership or joint venture.

ARTICLE XIV.

~~OPTION TO PURCHASE~~

In the event that Lessees acquire title to any tracts of land within the outside perimeter of the leased premises and thereafter offer any of such lands so acquired for sale, they do hereby give and grant unto Lessors during the term of this lease agreement the option and right to purchase such land offered for sale at the price for which it is offered. If any such land is offered for sale by Lessees, they shall give Lessors notice by certified mail at Lessors address as hereinafter set out, setting forth exactly what land is offered for sale, the price at which it is offered, and the terms and conditions of the sale. Within twenty (20) days after receipt of such notice by Lessors, they must give written notice by certified mail or in person to Lessees of their intention to exercise their option to purchase said land at the price at which it is offered for sale. In the event that Lessors do not exercise their option hereunder at the original price offered by Lessees, Lessees may not thereafter offer the property for sale to anyone else at a lower price without again giving the Lessors the right to purchase such property at the new lower price in accordance with the notice provisions as set out above. This option agreement shall enure to the benefit of the heirs and assigns of the Lessors provided that they must notify the Lessees herein of their acquired interest hereunder, with due evidence thereof, and stipulating the address that is to be used for any such notice of sale as herein contemplated.

ARTICLE XV.

PROHIBITION AGAINST HUNTING

Lessees herein, their agent, employees, contractors, and

sub-contractors shall not be permitted to carry fire arms on the leased premises, nor shall they be permitted to hunt or fish thereon, and anyone caught in violation of this provision shall be deemed as a trespasser and subject to the laws of the State of Texas against trespassing, and shall not again be permitted to enter upon the leased premises or the land of Lessors. This prohibition shall not affect any authorized security personnel of Lessees when on actual duty and acting in an authorized capacity as a security officer.

ARTICLE XVI.

MISCELLANEOUS

All rents or delivery of rent and notices, demands or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid to the addresses stated in this paragraph, and shall be deemed to have been given at the time of personal delivery or at the time of mailing.

All payments, notices, demands or requests from Lessees shall be given to Lessors at: Box 423, Jourdanton, Texas, 78026, or such other address as Lessors shall request in writing.

All payments, notices, demands or requests from Lessors to Lessees shall be given to Lessees at Box 6296, Waco, Texas, 76706, or at such other address as Lessees shall request in writing.

ARTICLE XVII.

MULTIPLE PARTIES

If more than one Lessor or Lessee is named in this lease, service of any notice on any one of the Lessees or Lessors shall be deemed service on all of the Lessees or Lessors, respectively.

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Atascosa County, Texas.

ARTICLE XVIII.

LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall be, for any reason, invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XIX.

PRIOR AGREEMENT SUPERSEDED

This agreement constitutes the sole and only agreement of the parties hereto, and supersedes any prior understanding, either written or oral, agreements between the parties respecting the within subject matter.


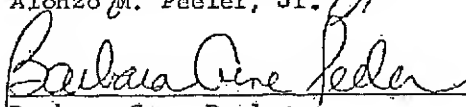
ARTICLE XX.

AMENDMENT

No amendment, modification or alteration of the terms hereof shall be binding unless same be in writing and dated subsequent to the date hereof, and duly executed by the parties hereto.

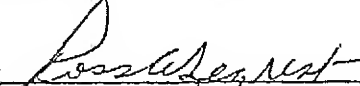
This lease has been executed by the parties at

Jourdanton, Texas, this the 23rd day of
September, 1975.


Alonzo M. Peeler, Jr.

Barbara Gene Peeler

LESSORS

BRAZOS ELECTRIC POWER COOPERATIVE, INC.

By 
General Manager

1 SOUTH TEXAS ELECTRIC COOPERATIVE, INC.

By Riggs Shepherd
General Manager

LESSEES

THE STATE OF TEXAS I
COUNTY OF ATASCOSA I

BEFORE ME, the undersigned authority, on this day personally appeared Alonzo M. Peeler, Jr., and Barbara Gene Peeler, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 23rd day of September, 1975.

My commission
expires 6-1-77.

Deella N. Dawick
Notary Public, Atascosa County, Texas

THE STATE OF TEXAS I
COUNTY OF MCLENNAN I

BEFORE ME, the undersigned authority, on this day personally appeared Ross A. Segrest, General Manager of Brazos Electric Power Cooperative, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 26th day of September, 1975.

My commission
expires 6-1-77.

Lain Ruff
Notary Public, McLennan County, Texas

THE STATE OF TEXAS I
COUNTY OF VICTORIA I

BEFORE ME, the undersigned authority, on this day personally appeared Riggs Shepherd, General Manager of South Texas Electric Cooperative, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 23 day of September, 1975.

My commission
expires 6-1-77.

Lester J. [Signature]
Notary Public, Victoria County, Texas

TAB 2



Mary Whittle
Partner
mary@gwjustice.com
(512) 610-2331 direct dial

August 10, 2018

Sent via electronic mail and Federal Express

Michael Nasi
Ali Abazari
Jackson Walker LLP
100 Congress Ave., Suite 1000
Austin, TX 78701
mnasi@jw.com
aabazari@jw.com

David H.O. Roth
Elder Bray & Bankler PC
McCombs Plaza
755 East Mulberry Ave., Suite 450
San Antonio, TX 78212
droth@elderbray.com

RE: Peeler Ranch Mineral Lease

Dear Mr. Nasi, Mr. Abazari, and Mr. Roth,

On June 20, 2018, my clients Alonzo M. Peeler, Jr., and Barbara Gene Peeler notified your client, San Miguel Electric Cooperative, Inc. ("SMECI"), that they will not accept any further delay rental payments purporting to extend the Coal, Lignite and Mineral Lease ("Mineral Lease") executed on August 15, 1953 by A.M. Peeler for the benefit of James F. Gray and that the lease term has ended. The last rental payment for the Mineral Lease appears to have been made in August 2017 for the period of August 15, 2017 to August 14, 2018.

On June 26, 2018, Mr. Roth contacted me asking for a time to discuss the matter, which I agreed to do. After we reported your client's wastewater discharges across the Peeler Ranch, Mr. Roth asked that I direct all communications to Mr. Nasi and Mr. Abazari. None of you have followed up with me to discuss the termination of the Mineral Lease, so I am providing this letter of clarification as we near the August 14 end date.

Mining ceased on the Peeler Ranch in January 2004 with the last royalty payment made in February 2004. Starting in August 2005, your client returned to paying the annual rental

payment of \$2.00 per acre each year to hold the property, even though the Peelers will never receive any further benefit from the Mineral Lease because their lignite has been mined out.

The leasehold estate acquired by Gray and his assigns (of which your client is one) was lost on the cessation of the use of the Peeler Ranch for the purposes of lignite exploration, development, or production. The only easement that remains is the right of ingress and egress to contiguous properties. The Peelers' acceptance of the \$2.00 per acre per year delay rental payments after the lignite was mined to extinction created a periodic tenancy or rendered SMECI a bare licensee, and the term of the tenancy or the license expires on August 14, 2018.

As of June 20, 2018, your client was on notice that the term of its tenancy expires August 14. After midnight on August 14, 2018, your client will no longer have any right of entry to the leasehold acreage. Should your client attempt to enter those lands after midnight on August 14, 2018, without express permission from the AM Peeler Ranch, LLC, my clients will assert claims for trespass.

The sheriff of Atascosa County has been notified of SMECI's eviction from the Mineral Lease acreage and will be contacted in the event there is any dispute regarding your client's access to the Peeler Ranch. Further, my clients will be installing fencing, signage, and game cameras to protect their property and enforce the boundaries.

Your client has failed to reclaim the Peeler Ranch in a reasonable time period after mining concluded in 2004; therefore, SMECI will no longer have access to the water control facilities referred to in Amendment 6 after August 14. However, your client retains the right to continue to use roadways, railroad rights of way, or other means of ingress and egress as necessary for the mining operations and removal of coal from other contiguous lands or lands in the same general area, upon the payment of ten (\$10) dollars per acre per year for lands used for ingress and egress. The only roadway your clients have paid the rental for and may use for ingress and egress from the plant to contiguous properties as necessary for mining operations is the Haul Road.

Starting August 20, the AM Peeler Ranch, LLC, will begin assessing the property contamination caused by your client, including taking control over and sampling the groundwater monitoring wells installed by your clients on the ranch acreage. In exchange for access to and sampling from the groundwater monitoring wells installed on the Plant site, my clients will agree to share samples with you for your client to conduct its own testing. In any event, my clients will be coordinating their efforts with the appropriate state or federal agencies.

Please be aware that we have notified the Evergreen Underground Water Conservation District that, as of August 15, SMECI no longer has legal control of the leasehold acreage, which may impact SMECI's groundwater production rights.

Page 3 of 3
August 10, 2018
Nasi, Abazari, & Roth
Peeler Ranch Mineral Lease

If you would like to discuss this matter, you can reach me at (512) 605-2300.

Sincerely,

A handwritten signature in black ink, appearing to be 'Mary Whittle', with a long horizontal line extending to the right.

Mary Whittle

TAB 3



LEGEND	
-----	PERMIT 11G BOUNDARY
	PHASE I BOND RELEASE
	PHASE I & II BOND RELEASE
	PHASE I, II & III BOND RELEASE

SAN MIGUEL ELECTRIC COOPERATIVE, INC.		APPROVALS	DATE
ENG.:	DB		8/18
CLIENT:	SMLM		8/18
BOND RELEASE STATUS MAP		DRAWN BY:	DB 8/18
		CHECKED BY:	DB 8/18
		DESIGN BY:	DB 8/18
		SCALE:	1 INCH = 1,250 FT.
		DATE:	8/13/18
		PROJ. NO.:	
		FILENAME:	BOND STATUS MAP
REV. NO.:		EXHIBIT NO.:	
			C
SHEET:	1 OF 1		